8646. Also, petition of Paul Henning and 53 residents of Los Angeles, Calif., to the Congress, urging support of House Joint Resolution 167, amending the Constitution of the United States with respect to the taking of property for public use in time of war; to the Committee on the Judiciary.

8647. By Mr. RUDD: Petition of the Central Trades and Labor Council of Greater New York and Vicinity, concerning the Wagner labor-disputes bill and extension of the National Recovery Act; to the Committee on Labor.

8648. By the SPEAKER: Petition of the Bakers' Counsel, opposing alien and sedition legislation; to the Committee on the Judiciary.

8649. Also, petition of the city of Chicago, urging enactment of legislation for the issuance of a special stamp in honor of Commodore John Barry; to the Committee on the Post Office and Post Roads.

SENATE

WEDNESDAY, MAY 29, 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 Tuesday, May 28, 1935, was dispensed with, and the Journal was approved.

CALL OF THE ROLL

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

Mr. LEWIS. I announce that the Senator from North Carolina [Mr. BAILEY], the Senator from Louisiana [Mr. LONG], and the Senator from Nevada [Mr. MCCARRAN] are unavoidably detained from the Senate. I ask that this announcement stand for the day.

Mr. AUSTIN. I wish to announce that my colleague the junior Senator from Vermont [Mr. GIBSON] is necessarily absent and that the Senator from Pennsylvania [Mr. DAVIS] is absent on account of illness.

The VICE PRESIDENT. Ninety Senators have answered to their names. A quorum is present.

CORRECTION—CORPORATE CONNECTIONS OF ARTHUR V. DAVIS

Mr. NORRIS. Mr. President, I wish to correct the RECORD. Yesterday, in referring to the subsidiary and other corporations with which Mr. Arthur V. Davis, chairman of the board and director of the Aluminum Co. of America, is connected, I gave a list of such corporations. I find that the list given by me yesterday was taken from the Directory of Directors of the City of New York. From Poor's Register of Directors of the United States and Canada, 1935, I wish to read the correct list. It is as follows:

Davis, Arthur Vining—chairman of board and director, Aluminum Co. of America, 801 Gulf Building, Pittsburgh, Pa.; Aluminum Manufactures, Inc., director; Aluminum Seal Co., director; Aluminum Goods Manufacturing Co., director; Alcoa Power Co., Ltd., president and director; Bauxite & Northern Railway, president and director; Franklin Fluorspar Co., director; Knoxville Power Co., director; Cedar Rapids Transmission Co., Ltd., director; Niagara Hudson Power Corporation, director; Louisiana Terminal Co., director; Pine Grove Realty Co., director; St. Lawrence River Power Co., president and director; Mellon National Bank, director; Union Trust Co. of Pittsbugh, director; Union Savings Bank of Pittsburgh, director; Canada Life Assurance Co., director; Bucyrus-Erie Corporation, director; American Brake Shoe & Foundry Co., director; Carolina Aluminum Co., president and director; International Power Securities Corporation, director; Pennsylvania Water & Power Co., director; Safe Harbor Water Power Corporation, director. (From p. 1344, Poor's Register of Directors of the United States and Canada, 1935.)

The number of directorships held by Mr. Davis, according to the statement made by me yesterday, was 11. The correct number, as shown by Poor's Register, is 23. I desire the correct number to be shown in the RECORD, and to apologize to Mr. Davis for the omission in my statement of yesterday of 12 corporations, of which he is an official.

Mr. FLETCHER. Mr. President, may I ask the Senator a question?

Mr. NORRIS. Certainly.

Mr. FLETCHER. The Senator yesterday alluded to some concern having a hundred miles, as I understood him to say, of frontage on both sides of the river?

Mr. NORRIS. Yes.

Mr. FLETCHER. I am wondering if the land conveyances to this concern carry riparian rights. That might make a little difference.

Mr. NORRIS. I do not know whether or not they carry riparian rights under the law of the State where they are situated, but Mr. Davis testified before the House Committee on Military Affairs that the Aluminum Co. of America owned 85 percent—I think it was 85; either 85 or 80—of all the land on both sides of the Little Tennessee River for something over a hundred miles, or practically from its source to its mouth.

Mr. FLETCHER. That would look as if it is not intended that this ownership should result in development, but rather in blocking development.

Mr. NORRIS. Yes; I think so.

SUPREME COURT CHAMBER IN CAPITOL BUILDING (S. DOC. NO. 67)

Mr. HAYDEN. Mr. President, within a few weeks the Supreme Court of the United States will terminate the occupancy of its chamber here in the Capitol Building which has been the scene of its deliberations for about 75 years. At this time it is most fitting that attention should be called to the occasion, because, beginning in the year 1819, after the reconstruction of the Capitol Building from the devastation wrought by the British soldiers, the Senate used that chamber for 40 years.

In January 1859 the north extension of the Capitol had progressed sufficiently to allow the occupancy of the Chamber which we now occupy, and at that time a committee was designated to arrange for a fitting tribute to the Hall which the Senate was then about to leave. The principal part of that ceremony was assigned to the then Vice President, John Cabel Breckinridge, of Kentucky, who was but 36 years of age at the time of his inauguration and the youngest man ever to hold the office of Vice President of the United States. His speech, as printed in the Congressional Globe, is a magnificent word picture of the men and events connected with the period of the occupation of that old Hall by the Senate.

I therefore deem it to be appropriate to offer a resolution for the printing of the Senate proceedings on that occasion as a Senate document and providing for additional copies. I send the resolution to the desk and ask unanimous consent for its immediate consideration.

The VICE PRESIDENT. Is there obection to the request of the Senator from Arizona?

There being no objection, the resolution (S. Res. 143) was read, considered, and agreed to, as follows:

Resolved, That the proceedings held in the United States Senate on January 4, 1859, upon the occasion of its removal from the old historic chamber, now occupied by the United States Supreme Court, to the present Chamber which it now occupies, be printed, with illustrations, as a Senate document, and that 5,000 additional copies be printed for the use of the Senate document room.

THIRTY-FIRST CONFERENCE OF THE INTERPARLIAMENTARY UNION, BRUSSELS, JULY 26–31, 1935

Mr. BARKLEY. Mr. President, our American Group of the Interparliamentary Union is in receipt of an invitation to send delegates, in the number according to the rules of the Interparliamentary Council, to the Thirty-first Conference of the Union, which will meet at Brussels, at the Palais de la Nation (Parliament Building), from July 26 to 31, 1935. According to the rules of the Council, our group is entitled to 28 votes.

In a letter covering the invitation our group is especially urged to send a strong delegation.

I ask unanimous consent to have printed as a part of my remarks the invitation to the meeting with other information regarding the Union and our participation.

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

The general invitation reads as follows:

You have been informed by the Interparliamentary Bureau that the XXXIst Conference of the Interparliamentary Union will meet at Brussels, at the Palais de la Nation, from July 26th until 31st, 1935.

The members of the Belgian Group will be glad to receive their colleagues from the national groups who intend to take part in the work of this Conference. They will do everything in order that their guests will keep an agreeable remembrance of their visit in Belgium.

Considering the importance of the questions on the agenda and the distinguished personalities who will take part in the debates, we do expect that many colleagues will accept our invitation.

The Belgian Government join with us and invite you heartily to this Conference and to visit, at the same occasion, Belgium and the International Exhibition at Brussels, where the most beautiful productions from all the countries of the world can be admired.

In case you would have the certainty of taking part in our work, we should feel obliged if you would kindly forward at your earliest convenience to the secretary of your group the herewith-joined form duly filled, with the statement of the persons who will accompany you.

Further informations will supply details re passports, traveling facilities, customs formalities, and receptions.

With regard to the accommodation in the hotels, it is necessary to reserve from this very moment the rooms in the hotels, a list of which is joined herewith.

Because of the attraction of the Brussels World's Fair and the organization at this occasion of several congresses in July next, a great number of rooms have already been reserved for that time, and the number of rooms still available in July is very small.

Please find herewith a reservation bill, which is to be sent to your group secretary so that it may reach us at the same time as the form; after this date of June the 15th, we cannot guarantee the possibility of reserving rooms for the duration of the Conference.

Before concluding, we avail ourselves of the opportunity to renew the expression of the gladness with which we will receive you, and we shall do all to make your stay at Brussels useful and agreeable.

Yours faithfully,

For the Belgian Group:

Count CARTON DE WIART,
The President,
Minister of State, Deputy.
PROSPER DE BRUYN,
The Parliamentary Secretary,
Member of the Senate.

All correspondence regarding the XXXIst Conference to be addressed: Ernest Maes, Esq., Clerk of the Senate, Palais de la Nation, Brussels.

PROGRAM OF THE CONFERENCE

1. Election of the president and bureau of the Conference.
2. General debate based on the report of the secretary-general.
3. Juridical problems.
(a) Codification of world law.
Report to be presented in the name of the permanent committee on juridical questions by M. Henri La Fontaine, former vice president of the Belgian Senate.
(b) Neutrality and assistance.
Report to be presented in the name of the permanent committee on juridical questions by M. V. V. Pella, former deputy, Minister Plenipotentiary (Rumania).
4. Manufacture of and trade in arms.
Report to be presented in the name of the permanent committee on the reduction of armaments by M. Forges Davanzati, senator of the Kingdom of Italy.
5. Economic and monetary problems.
(a) World economic solidarity.
(Report to be presented in the name of the permanent committee on economic and financial questions by H. E. Baron Szterényi, member of the upper house, former Minister (Hungary).
(b) Stabilisation of currencies.
Report to be presented in the name of the permanent committee on economic and financial questions by M. Maurice Palmade, deputy, former Minister (France).
6. Evolution of the representative system.
Report to be presented in the name of the permanent committee on political and organization questions by Dr. Henryk Loewenherz, senator (Poland).
7. Communication of the names of delegates of the groups to the Inter-Parliamentary Council from the XXXIst to the XXXIInd Conference.
Under article 13 of the statutes of the union, each group must nominate its two delegates to the council at least one month before the opening of the Conference. These appointments are communicated to the Inter-Parliamentary Bureau, and by the latter to the Conference.
8. Election of a member of the executive committee to take the place of H. G. the Duke of Sutherland, member of the House of Lords, the retiring member.
Under article 17 of the statutes, a retiring member is not eligible for reelection and must be replaced by a member belonging to another group.
All the rapporteurs have been asked to prepare their reports beforehand. These will be printed, together with the texts of the resolutions to be presented to the conference, in the "documents préliminaires" of the conference, which will be sent in good time to all participants whose subscriptions have been paid to the Interparliamentary Bureau. (See below: "Financial contributions to the expenses of the Conference.")

TIME TABLE OF THE CONFERENCE

Sittings will be held punctually from 9:30 a. m. until 1 p. m. and from 3 p. m. punctually onwards.
Friday, July 26, at 3 p. m.: Opening of the Conference. General debate on the report of the secretary general.
Saturday, July 27:
Morning: Continuation of the general debate.
Afternoon (if necessary): Conclusion of the general debate.
Sunday, July 28: Free. Excursion.
Monday, July 29:
Morning: Juridical problems.
Afternoon: Manufacture of and trade in arms.
Tuesday, July 30, morning and afternoon: Economic and monetary questions.
Wednesday, July 31:
Morning: Evolution of the representative system.
Afternoon: Conclusion of the debate on the evolution of the representative system. Elections. Close of the Conference.
The council will meet on the morning of Friday, July 26, and after the first sitting of the Conference.

LIST OF DELEGATES TO RECENT CONFERENCES

Members of the United States Congress who have attended conferences of the Interparliamentary Union, 1921 to 1934, inclusive, have been as follows:

1921—Stockholm, Sweden: Senators William B. McKinley, president of Illinois group; Joseph T. Robinson, Arkansas; Thomas J. Walsh, Montana. Representatives Alben W. Barkley, Kentucky; Fred A. Britten, Illinois; Edwin B. Brooks, Illinois; Andrew J. Montague, Virginia; James L. Slayden, Texas.

1922—Vienna, Austria: Senators T. H. Caraway, Arkansas; W. J. Harris, Georgia; E. F. Ladd, North Dakota; William B. McKinley, president of Illinois group; Selden P. Spencer, Missouri. Representatives Theodore E. Burton, Ohio; Andrew J. Montague, Virginia; William A. Oldfield, Arkansas; Henry W. Temple, Pennsylvania.

1923—Copenhagen, Denmark: Senators Henry F. Ashurst, Arizona; John W. Harreld, Oklahoma; William B. McKinley, Illinois; Thomas Sterling, South Dakota; Claude A. Swanson, Virginia; Joseph T. Robinson, Arkansas. Representatives Theodore E. Burton, Ohio; Carl Chindblom, Illinois; Andrew J. Montague, Virginia; John T. Raker, California.

1924—Bern and Geneva, Switzerland: Senators Charles Curtis, Kansas; William B. McKinley, president of Illinois group; Selden P. Spencer, Missouri; O. E. Weller, Maryland. Representatives Theodore E. Burton, Ohio; Tom Connally, Texas; John McSwain, South Carolina; Andrew J. Montague, Virginia.

1925—Washington, D. C., and Ottawa, Canada: Senators Simeon D. Fess, Ohio; William B. McKinley (president of group), Illinois; Claude A. Swanson, Virginia; Thomas J. Walsh, Montana. Representatives Ernest R. Ackerman, New Jersey; Alben W. Barkley, Kentucky; L. M. Black, New York; Thomas L. Blanton, Texas; Fred A. Britten, Illinois; Theodore E. Burton, Ohio; Clarence Cannon, Missouri; Edmund N. Carpenter, Pennsylvania; Emanuel Celler, New York; Carl R. Chindblom, Illinois; Ross A. Collins, Mississippi; Tom Connally, Texas; F. Cordoba, Davila, Philippines; Edward E. Denison, Illinois; Finis J. Garrett, Tennessee; Allard H. Gasque, South Carolina; Thomas Hall, North Dakota; John Philip Hill, Maryland; Lister Hill, Alabama; Homer Hoch, Kansas; Grant M. Hudson, Michigan; Morton D. Hull, Illinois; Lamar Jeffers, Alabama; Fiorello H. LaGuardia, New York; J. Charles Linthicum, Maryland; John J. McSwain, South Carolina; Ogden L. Mills, New York; Andrew J. Montague, Virginia; William A. Oldfield, Arkansas; Stephen G. Porter, Pennsylvania; George J. Schneider, Wisconsin; J. H. Sinclair, North Dakota; John B. Sosnowski, Michigan; Henry W. Temple, Pennsylvania; Maurice H. Thatcher, Kentucky; J. Q. Tilson, Connecticut; C. B. Timberlake, Colorado; J. M. Wainwright, New York; Richard Yates, Illinois; F. H. Zihlman, Maryland.

1926—Geneva, Switzerland: Senators T. H. Caraway, Arkansas; Pat Harrison, Mississippi; Claude A. Swanson, Virginia. Representatives Theodore E. Burton, Ohio; Stephen G. Porter, Pennsylvania.

1927—Paris, France: Senators Elmer Thomas, Oklahoma; Millard E. Tydings, Maryland; Lawrence D. Tyson, Tennessee. Representatives William D. B. Ainey, Pennsylvania; A. Piatt Andrew, Massachusetts; Richard Bartholdt, Missouri; Sol Bloom, New York; Fred A. Britten, Illinois; Theodore E. Burton, Ohio; Emanuel Celler, New York; Thomas C. Cochran, Pennsylvania; Roy G. Fitzgerald, Ohio; Edgar Howard, Nebraska; Jed Johnson, Oklahoma; Andrew J. Montague, Virginia; Stephen G. Porter, Pennsylvania; Fred S. Purnell, Indiana; Hatton W. Sumners, Texas.

1928—Berlin, Germany: Senators Walter E. Edge, New Jersey; Elmer Thomas, Oklahoma. Representatives Richard Bartholdt, Maryland; Fred Britten, Illinois; Thomas C. Cochran, Pennsylvania; Roy G. Fitzgerald, Ohio; Fiorello H. LaGuardia, New York; J. Charles Linthicum, Maryland; Andrew J. Montague, Virginia.

1929—Geneva, Switzerland: Senator Millard Tydings, Maryland. Representatives Sol Bloom, New York; Richard Bartholdt, Missouri; Carl Chindblom, Illinois; Thomas C. Cochran, Pennsylvania; Fred Britten, Illinois; Roy G. Fitzgerald, Ohio; Morton D. Hull, Illinois; Jed Johnson, Oklahoma; Franklin S. Korell, Oregon; J. Charles Linthicum, Maryland; John J. McSwain, South Carolina; Andrew J. Montague, Virginia; Richard Wigglesworth, Massachusetts.

1930—London, England: Senators Henry F. Ashurst, Arizona; Alben W. Barkley, Kentucky; Tom Connally, Texas; Millard Tydings, Maryland; Burton K. Wheeler, Montana. Representatives Sol Bloom, New York; Richard Bartholdt, Missouri; Fred Britten, Illinois; Carl Chindblom, Illinois; Thomas C. Cochran, Pennsylvania; Roy G. Fitzgerald, Ohio; Franklin G. Ford, New Jersey; Burton L. French, Idaho; Morton D. Hull, Illinois; F. H. LaGuardia, New York; Andrew J. Montague, Virginia; Ruth Bryan Owen, Florida; Bertrand H. Snell, New York; George R. Stobbs, Massachusetts.

1931—Bucharest, Rumania: Senator Burton K. Wheeler, Wyoming; Representatives Cyrenus Cole, Iowa; Burton L. French, Idaho; Fletcher Hale, New Hampshire; Fritz G. Lanham, Texas; J. Charles Linthicum, Maryland; Andrew J. Montague, Virginia; William I. Sirovich, New York.

1932—Geneva, Switzerland: Senator Claude A. Swanson, Virginia. Representative Andrew J. Montague, Virginia.

1933—Madrid, Spain: Attended only by the permanent executive secretary, Arthur Deerin Call.

1934—Istanbul, Turkey: Senators Tom Connally, Texas; Joseph T. Robinson, Arkansas. Representatives Thomas C. Cochran, Pennsylvania; William B. Oliver, Alabama.

Dr. Arthur Deerin Call, permanent executive secretary of the Group has attended all of these Conferences.

MESSAGE FROM THE HOUSE—ENROLLED BILL AND JOINT RESOLUTION SIGNED

A message from the House of Representatives, by Mr. Haltigan, one of its reading clerks, announced that the Speaker had affixed his signature to the following enrolled bill and joint resolution, and they were signed by the Vice President:

S. 1023. An act to provide for the payment of a military instructor for the high-school cadets of Washington, D. C.; and

S. J. Res. 88. Joint resolution to abolish the Puerto Rican Hurricane Relief Commission and transfer its functions to the Secretary of the Interior.

REGISTRATION AND REGULATION OF LOBBYISTS—RECONSIDERATION OF BILL

Mr. CLARK. Mr. President, I desire to enter a motion to reconsider the votes by which Senate bill 2512 was ordered to be engrossed for a third reading and passed on yesterday.

Mr. BARKLEY. What bill is it, Mr. President?

Mr. CLARK. It is the so-called "Black lobbying bill."

The VICE PRESIDENT. The motion will be entered.

Mr. CLARK subsequently said: Mr. President, I am advised that Senate bill 2512 has been sent to the House. Therefore, in order to preserve my right to make a motion to reconsider, I ask unanimous consent that the House be requested to return the bill to the Senate.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. BLACK subsequently said: Mr. President, I have just learned that while I was out of the Chamber a unanimous-consent request was made that Senate bill 2512 be returned from the House. Now that I am here, and in view of the fact that I introduced the bill, I ask unanimous consent that the unanimous consent heretofore granted be rescinded.

Mr. BARKLEY. Mr. President, it seems to me that the Senator from Alabama [Mr. BLACK] and the Senator from Missouri [Mr. CLARK], who are interested in this matter, ought to be on the floor simultaneously when the matter is disposed of.

Mr. BLACK. I think the bill should be placed back in the situation in which it was when I was not here, without some Senator raising an objection which was not raised in my absence.

As I say, this action was taken at a time when I was absent. I knew nothing about it. I therefore ask unanimous consent for reconsideration of the unanimous-consent agreement under which the Senate requested the return of Senate bill 2512 to this body.

Mr. McNARY. Mr. President, I have no knowledge of the transaction about which the Senator speaks. I do not know what the bill is. Is it on the calendar?

Mr. BLACK. The bill was passed yesterday and went to the House.

Mr. McNARY. What bill is it?

Mr. BLACK. It is the so-called "lobby registration bill."

Mr. McNARY. And then a request was made to recall the papers and restore the bill to the calendar? Is that the request which was agreed to?

Mr. BLACK. What I am now referring to is the request which was made that the House return the papers to this body. If I had been here, I should have desired to discuss the matter and have a vote on it.

Mr. McNARY. Who made the request?

Mr. BLACK. I understand the Senator from Missouri [Mr. CLARK] made it.

Mr. McNARY. I am perfectly indifferent about the matter; but I think, in fairness to the Senator who made the request, that no action should be taken in his absence.

Mr. BLACK. Does not the Senator think, in fairness to the Senator who introduced the bill, that no request for the recall of the bill from the House should have been made without calling a quorum?

Mr. McNARY. That is wholly between the Senators concerned.

Mr. BLACK. Then I should think this matter would be, too, so far as the Senator from Oregon is concerned.

Mr. McNARY. But, as a fair arbiter, I should think the Senator from Missouri should be present. I have no objection to the request of the Senator from Alabama, but I think, in fairness to all concerned, the Senator from Missouri should be here.

Mr. BLACK. All I am asking is that the Senate, by unanimous consent, agree to place the situation exactly as it would have been if the request for the recall of the bill had not been made. I think that is perfectly fair.

Mr. McNARY. If the Senator from Missouri may be sent for, I shall make no objection; but I shall make objection in his absence.

Mr. BLACK. I regret very much that the Senator did not see fit to make the same objection when the Senator from Alabama was absent.

Mr. McNARY. I was not here.

Mr. BLACK. I regret very much that the Senator was not here on guard to see that the action was not taken during my absence. The Senator objects, then?

Mr. McNARY. I object, in the absence of the Senator from Missouri, and only for that reason—not because I oppose the proposal, but I oppose any action being taken when a Senator involved in the transaction is absent.

The VICE PRESIDENT. Objection is made.

Mr. BLACK. Mr. President, I move that the action taken by the Senate to recall the bill from the House be reconsidered. I simply enter the motion, and I do so in order to suspend the proceedings.

The VICE PRESIDENT. The motion is entered.

PASSAIC VALLEY SEWERAGE COMMISSIONERS *v.* THE UNITED STATES

The VICE PRESIDENT laid before the Senate a letter from the chief clerk of the Court of Claims, transmitting a certified copy of the special findings of fact and opinion of the court in the case of the *Passaic Valley Sewerage Commissioners* v. *the United States* (No. 17631, Congressional), which case was referred to the court on June 5, 1926, by resolution of the Senate under the act of March 3, 1911

(known as the "Judicial Code"), which, with the accompanying paper, was referred to the Committee on Claims.

PETITIONS AND MEMORIALS

The VICE PRESIDENT laid before the Senate the following joint resolution of the Legislature of the State of California, which was referred to the Committee on Agriculture and Forestry:

Assembly joint resolution relative to memorializing Congress to furnish aid in the construction of check dams in the Salinas River Valley

Whereas the water level of the Salinas Valley is rapidly declining and the salt water is beginning to encroach inwardly from the ocean; and

Whereas the cost of power is making it almost prohibitive for agricultural pursuits in the Salinas Valley, due to the low water level; and

Whereas erosion is taking place and the soils are rapidly being put in danger because of the lack of proper soil and water protection; and

Whereas the people of Salinas Valley are aware of this and are desirous of having the Federal Government remedy these defects to save the Salinas Valley for future generations to conduct agricultural pursuits and to continue to increase the inhabitation of the Salinas Valley; and

Whereas the water for domestic use may soon be jeopardized if the population of the Salinas Valley increases: Now, therefore, be it

Resolved by the Assembly and Senate of the State of California jointly, That the Congress of the United States be urged to provide a Federal Government survey and plan for the construction of check dams and a soil-erosion prevention project; and be it further

Resolved, That the Congress be urged to take action in this regard immediately so that the water and soils of the Salinas Valley may be preserved for future generations that may inhabit the Salinas Valley; and be it further

Resolved, That the chief clerk of the assembly is hereby instructed forthwith to transmit copies of this resolution to the President of the United States, and to the President of the Senate, the Speaker of the House of Representatives, and to each of the Senators and Representatives from California in the Congress of the United States.

The VICE PRESIDENT also laid before the Senate the following joint resolution of the Legislature of the State of Maryland, which was referred to the Committee on Commerce:

Joint resolution requesting the Congress of the United States to appropriate a sufficient sum of money for the immediate use of the United States Bureau of Fisheries to conduct a thorough biological survey of the Chesapeake Bay and its tributaries relative to the spawning grounds and migratory and other habits of certain fish

Whereas it is very important that accurate scientific knowledge relative to the spawning grounds and habits of edible fish be acquired in order to best conserve such fish life: Therefore be it

Resolved by the General Assembly of Maryland, That the Congress of the United States be, and it is hereby, requested to appropriate promptly a sufficient amount of money to enable the United States Bureau of Fisheries to begin an immediate and thorough biological and practical survey of the Chesapeake Bay and its tributaries for the purpose of ascertaining all the essential facts relative to the spawning grounds and migratory and other habits of the striped bass or rock, shad, herring, trout, bluefish, and other migratory edible fish by means of fish tagging and such other experiments as may be deemed necessary and proper for that purpose, as the results of such a study will rebound to the benefit of all sections of the United States where migratory food fish are a source of revenue to its people; and be it further

Resolved, That the secretary of state be, and he is hereby, directed to send, under the great seal of the State, a copy of this resolution to the President of the Senate, to the Speaker of the House of Representatives, to the United States Bureau of Fisheries, and to each representative from Maryland in the Senate and House of Representatives of the United States Congress.

The VICE PRESIDENT also laid before the Senate the following joint resolutions of the Legislature of the State of Maryland, which were referred to the Committee on Naval Affairs:

A joint resolution requesting Congress to create a Centenary Planning and Building Commission of the United States Naval Academy

Whereas the existing needs of the United States Naval Academy are of such a character that prompt measures for a planned building program must be immediately undertaken if the desirable standard of the education of the naval officer is to be maintained; and

Whereas the Navy Department's planned increase in the number of midshipmen at the United States Naval Academy will necessitate additional facilities beyond those which the present existing needs make imperative; and

Whereas the Public Works program of the President of the United States calls for such public-building projects to aid in establishing the economic recovery of the United States: Therefore be it

Resolved by the General Assembly of Maryland, That the Congress of the United States be, and it is hereby, requested to take the necessary steps to set up a commission, to be known as the "Centenary Planning and Building Commission of the United States Naval Academy", as a means of meeting these needs and of fittingly commemorating the hundredth anniversary of the founding of the Naval Academy in 1845; and be it further

Resolved, That the Representatives from the State of Maryland in the Senate and House of Representatives of the United States be, and they are hereby, requested to urge and support the enactment of such legislation; and be it further

Resolved, That the secretary of the State of Maryland be, and he is hereby, requested to transmit under the great seal of this State a copy of the aforegoing resolution to the President of the United States Senate and the Speaker of the House of Representatives of the United States and to each of the Representatives from Maryland in the Senate and House of Representatives of the United States.

A joint resolution requesting the President and the Congress of the United States to station the ship *Constellation* at Fort McHenry, Baltimore

Whereas the city of Baltimore equipped and manned the first two vessels for the Continental Navy, and in 1776 supplemented the Continental Navy with the Maryland State Navy, composed of 25 vessels, each carrying from 20 to 30 guns; and

Whereas about one-half of the privateer fleet operating during the Revolution captured more prisoners than were surrendered by the British at Saratoga and Yorktown together, were sent out from Baltimore; and

Whereas the frigate *Constellation* was launched in Baltimore on September 7, 1796, and was one of the first vessels in the Navy of the United States, its name typifying the galaxy of stars in the American flag; and

Whereas the State of Maryland furnished more officers for the first Navy of the United States than any other State in the Union: Therefore be it

Resolved by the General Assembly of Maryland, That the President and the Congress of the United States be, and they are hereby, requested to station the *Constellation* at Fort McHenry, the birthplace of The Star-Spangled Banner, as a fitting memorial to its naval prestige in the early days of the Republic; and be it further

Resolved, That the secretary of State of Maryland be, and he is hereby, directed to send a copy of this resolution, under the great seal of the State, to the President of the United States, to the President of the Senate, to the Speaker of the House of Representatives, to the Secretary of the Navy, and to each Senator and Representative from Maryland in the United States Congress.

The VICE PRESIDENT also laid before the Senate the following joint resolution of the Legislature of the State of Maryland, which was ordered to lie on the table:

A joint resolution requesting the Congress of the United States to pass the bill by Senator TYDINGS providing for the construction of a Washington-Gettysburg Boulevard from the city of Washington to the battlefield of Gettysburg

Whereas a bill has been introduced in the Senate of the United States by Senator TYDINGS providing for the construction of a Washington-Gettysburg Boulevard, connecting the city of Washington with the battlefield of Gettysburg, in the State of Pennsylvania: Therefore be it

Resolved by the General Assembly of Maryland, That the Congress of the United States is most earnestly requested to pass said bill; and be it further

Resolved, That the secretary of the State of Maryland be, and he is hereby requested to transmit, under the great seal of the State, a copy of the aforegoing resolution to the President of the United States, the President of the Senate, the Speaker of the House of Representatives, and to each of the Representatives from Maryland in both Houses of Congress.

The VICE PRESIDENT also laid before the Senate a resolution adopted by a convention of the Toilet Goods Industry, at New York City, N. Y., opposing the renewal of the present excise tax on perfume and toilet preparations, which was referred to the Committee on Finance.

He also laid before the Senate resolutions endorsed by the board of directors of the Graphic Arts Association of the Houston-Galveston region, Houston, Tex., protesting against Order No. 7028, issued by the Postmaster General on April 15, 1935, rescinding that section of order no. 6638 extending to users of direct-mail advertising a simplified form of adressing mail matter to be delivered by city and village letter carriers, which, with the accompanying paper, were referred to the Committee on Post Offices and Post Roads.

He also laid before the Senate a resolution adopted by the executive committee of the National Association of Safety Razor and Blade Manufacturers, New York City, N. Y., fa-

voring the enactment of legislation continuing the National Industrial Recovery Act to June 16, 1937, which was ordered to lie on the table.

Mr. CAPPER presented a petition of sundry citizens, being women of the First Presbyterian Church of Junction City, Kans., praying for advancement of the movement for peace, which was referred to the Committee on Foreign Relations.

Mr. FLETCHER presented a petition of sundry citizens (being celery growers) of Manatee County, Fla., praying for the adoption of proposed amendments to the Agricultural Adjustment Administration program, which was referred to the Committee on Agriculture and Forestry.

Mr. WALSH presented a resolution adopted by Greenfield Lodge, No. 997, Loyal Order of Moose, of Greenfield, Mass., protesting against the cotton-processing tax as adversely affecting the textile industry, which was referred to the Committee on Finance.

He also presented the petition of Union No. 2172, United Brotherhood of Carpenters and Joiners of America, of Boston, Mass., praying for the enactment of legislation placing a graduated tax on cigarettes, which was referred to the Committee on Finance.

He also presented a petition of sundry citizens of Boston and vicinity, in the State of Massachusetts, praying for the prompt enactment of legislation providing unemployment insurance, old-age pensions, and benefits for maternal and infant health, which was ordered to lie on the table.

He also presented petitions of several members of Bunker Hill Lodge, No. 1099, and North Union Lodge, No. 74, both of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, of Boston; Local No. 319, International Association of Machinists, of Lowell; and sundry citizens of Worcester, all in the State of Massachusetts, praying for the enactment of pending legislation extending the effective period of the Emergency Railroad Transportation Act, which were ordered to lie on the table.

Mr. NORRIS presented the following resolution of the Senate of the State of Nebraska, which was referred to the Committee on Banking and Currency:

Resolution memorializing the Congress of the United States to make a complete investigation of the sugar-beet industry

Whereas the sugar-beet industry is of major importance in agricultural regions, and its prosperity affects producers, processors, and consumers alike, and is a means of livelihood for great numbers of employees of such growers and processors; and

Whereas annually controversies arise between sugar-beet producers and sugar-beet processors concerning contract terms and alleged discriminations; and

Whereas such annual sugar-beet controversy is far-reaching in its detrimental effects to farmers, processors, employees, and consumers, and should be eliminated, as it creates a great economic loss, retards the normal flow of business, and prevents the normal progress which would otherwise be made in such industry: Now, therefore, be it

Resolved by the Senate of the State of Nebraska in fiftieth regular session assembled—

1. That this senate hereby respectfully petitions and memorializes the Congress of the United States to make a complete investigation of the sugar-beet industry, paying particular attention to the causes of the annual controversy which arises concerning contract terms and alleged discriminations.

2. That the secretary of this senate is hereby ordered and directed forthwith to forward a copy of this resolution, properly authenticated and suitably engrossed, to the President of the United States, the Vice President of the United States, the Speaker of the House of Representatives, and to the United States Senators representing the State of Nebraska, and to the Congressmen in the House of Representatives of the United States representing the State of Nebraska, to take such steps as are necessary to provide for a complete investigation of the sugar-beet industry and thus determine the cause of the annual controversy arising in such industry and, if possible, a remedy therefor.

TRAVEL BY THE AMERICAN TEAM ATTENDING OLYMPIC GAMES

Mr. WAGNER. Mr. President, I present and ask unanimous consent to have printed in the RECORD and appropriately referred a resolution adopted by Navy Post, No. 16, the American Legion, of New York City, N. Y.

There being no objection, the resolution was referred to the Committee on Commerce and ordered to be printed in the RECORD, as follows:

NAVY POST, No. 16, AMERICAN LEGION,
New York.

To whom it may concern:

At the April 3d meeting of Navy Post, No. 16, American Legion, the following resolution was unanimously adopted:

"Whereas the Olympic Games of 1936 are to be held in Germany; and

"Whereas an Olympic team of athletes representing the United States may be entered in those games; and

"Whereas such a team will be supported by contributions from sources within the United States; and

"Whereas it is vitally necessary for the welfare of this country that its merchant marine be supported not only by subsidy but by the patronage of the citizens and business interests of the United States; and

"Whereas efforts are now being made by certain foreign representatives that the Olympic team of the United States should travel to the Olympic Games of 1936 in ships of foreign registry: Now, therefore, be it

"*Resolved by Navy Post, No. 16, of the American Legion, Department of New York,* That it is the consensus of this post that the team representing the United States at the Olympic Games in Germany in 1936 should travel to and from those games in ships of United States registry manned by American officers and crews; and be it further

"*Resolved,* That copies of this resolution be forwarded to the United States Chamber of Commerce, New York Chamber of Commerce, the Senators and Congressmen representing the State of New York, the Amateur Athletic Union of the United States, and interested maritime organizations."

In order to build up the American merchant marine service comparable with other countries, and for patriotic reasons, it is urged that you exercise your influence to see that the above resolution is carried out.

Certified:

HAROLD K. HUGHES,
Commander.
JOHN R. EGNER,
Adjutant.

REPORTS OF COMMITTEES

Mr. TYDINGS, from the Committee on Appropriations, to which was referred the bill (H. R. 8021) making appropriations for the legislative branch of the Government for the fiscal year ending June 30, 1936, and for other purposes, reported it with amendments and submitted a report (No. 743) thereon.

Mr. WAGNER, from the Committee on Public Lands and Surveys, to which was referred the bill (S. 2649) to provide for a recreation area within the Prescott National Forest, Ariz., reported it with an amendment and submitted a report (No. 744) thereon.

Mr. KING, from the Committee on the District of Columbia, to which was referred the joint resolution (S. J. Res. 133) for designation of a street to be known as "Missouri Avenue", reported it without amendment and submitted a report (No. 745) thereon.

ENROLLED BILLS PRESENTED

Mrs. CARAWAY, from the Committee on Enrolled Bills, reported that on the 28th instant that committee presented to the President of the United States the following enrolled bills:

S. 1522. An act to provide funds for cooperation with public-school districts in Glacier County, Mont., in the improvement and extension of school buildings to be available to both Indian and white children;

S. 1523. An act to provide funds for cooperation with the public-school board at Wolf Point, Mont., in the construction or improvement of a public-school building to be available to Indian children of the Fort Peck Indian Reservation, Mont.;

S. 1524. An act to provide funds for cooperation with school district no. 23, Polson, Mont., in the improvement and extension of school buildings to be available to both Indian and white children;

S. 1525. An act to provide funds for cooperation with joint school district no. 28, Lake and Missoula Counties, Mont., for extension of public-school buildings to be available to Indian children of the Flathead Indian Reservation;

S. 1526. An act to provide funds for cooperation with the school board at Brockton, Mont., in the extension of the public-school building at that place to be available to Indian children of the Fort Peck Indian Reservation;

S. 1528. An act for expenditure of funds for cooperation with the public-school board at Poplar, Mont., in the construction or improvement of public-school building to be available to Indian children of the Port Peck Indian Reservation, Mont.;

S. 1530. An act to authorize appropriations for the completion of the public high school at Frazer, Mont.;

S. 1533. An act to provide funds for cooperation with Marysville School District, No. 325, Snohomish County, Wash., for extension of public-school buildings to be available for Indian children;

S. 1534. An act to provide funds for cooperation with the school board at Queets, Wash., in the construction of a public-school building to be available to Indian children of the village of Queets, Jefferson County, Wash.;

S. 1535. An act to provide funds for cooperation with White Swan School District, No. 88, Yakima County, Wash., for extension of public-school buildings to be available for Indian children of the Yakima Reservation;

S. 1536. An act to provide funds for cooperation with the public-school board at Covelo, Calif., in the construction of public-school buildings to be available to Indian children of the Round Valley Reservation, Calif.; and

S. 1537. An act to provide funds for cooperation with the School Board of Shannon County, S. Dak., in the construction of a consolidated high-school building to be available to both white and Indian children.

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. LA FOLLETTE:

A bill (S. 2941) for the relief of Izelda Boisoneau;

A bill (S. 2942) for the relief of John Hoffman; and

A bill (S. 2943) for the relief of John Morris; to the Committee on Claims.

By Mr. WAGNER:

A bill (S. 2944) to prevent and make unlawful the practice of law before Government departments, bureaus, commissions, and their agencies by those other than duly licensed attorneys at law; to the Committee on the Judiciary.

A bill (S. 2945) granting a pension to Lulu Sigel Schehl; to the Committee on Pensions.

By Mr. SHIPSTEAD:

A bill (S. 2946) for the relief of Mathilda Carson; to the Committee on Claims.

By Mr. FRAZIER:

A bill (S. 2947) authorizing payment to the Sisseton and Wahpeton Bands of Sioux Indians for certain lands ceded by them to the United States by a treaty of July 23, 1851; to the Committee on Indian Affairs.

By Mr. SCHALL:

A bill (S. 2948) granting a pension to John M. Newburgh; to the Committee on Pensions.

By Mr. NORBECK:

A bill (S. 2949) granting a pension to William Elk Sky (with accompanying papers); to the Committee on Pensions.

By Mr. TRUMAN:

A bill (S. 2950) granting the consent of Congress to the county of Saline, Mo., to construct, maintain, and operate a toll bridge across the Missouri River at or near Miami, Mo.; to the Committee on Commerce.

A bill (S. 2951) for the relief of Harry Warren Halterman (with accompanying papers); and

A bill (S. 2952) for the relief of the Birmingham Drainage District, State of Missouri (with accompanying papers); to the Committee on Claims.

By Mr. KING:

A bill (S. 2953) to provide for the inspection, control, and regulation of steam boilers and unfired pressure vessels in the District of Columbia; and

A bill (S. 2954) to control and regulate the discharge or emission of smoke, soot, noxious gases, cinders, or fly ash into open air in the District of Columbia; to the Committee on the District of Columbia.

By Mr. WAGNER:

A joint resolution (S. J. Res. 139) requesting the President to extend to the International Statistical Institute an invitation to hold its twenty-fourth session in the United States in 1939; to the Committee on Foreign Relations.

AMENDMENT TO RIVER AND HARBOR BILL

Mr. SHIPSTEAD submitted an amendment intended to be proposed by him to the bill (H. R. 6732) authorizing the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes, which was referred to the Committee on Commerce and ordered to be printed.

ADDITIONAL CADETS AT MILITARY ACADEMY—RECONSIDERATION OF BILL

Mr. SHEPPARD. Mr. President, I desire to enter a motion to reconsider the action of the Senate in concurring in the amendments of the House to Senate bill 2105, relating to an additional number of cadets at West Point.

The VICE PRESIDENT. The motion will be entered.

Mr. SHEPPARD. Now I should like to have considered and agreed to the concurrent resolution which I send to the desk, in order that I may be in parliamentary position to move reconsideration at the proper time.

The VICE PRESIDENT. The concurrent resolution will be read.

The concurrent resolution (S. Con. Res. 16) was read, as follows:

Resolved by the Senate (the House of Representatives concurring), That the action of the Speaker of the House of Representatives and the Vice President of the United States, respectively, in signing the enrolled bill (S. 2105) to provide for an additional number of cadets at the United States Military Academy, and for other purposes, be, and the same is hereby, rescinded; and that the House of Representatives be, and it is hereby, requested to return to the Senate the message announcing its agreement to the amendments of the House to the said bill.

Mr. FRAZIER. Mr. President, will the Senator from Texas state the reason for the concurrent resolution?

Mr. SHEPPARD. My object is to send the bill to conference. There have been some developments which make it advisable, in the interest of the proposed legislation, that the amendments added to the bill by the House be considered in conference.

The VICE PRESIDENT. Is there objection to the present consideration of the concurrent resolution?

There being no objection, the concurrent resolution was considered and agreed to.

ASSISTANT CLERKS TO SENATORS

Mr. McKELLAR submitted the following resolution (S. Res. 144), which was referred to the Committee to Audit and Control the Contingent Expenses of the Senate:

Resolved, That each Senator may appoint, at the close of the present session of Congress, one assistant clerk, to be paid from the contingent fund of the Senate at $2,220 per annum until otherwise ordered by the Senate.

RECIPROCAL-TRADE AGREEMENTS

Mr. VANDENBERG. Mr. President, I send to the desk a resolution, which I ask to have read and referred to the Committee on Finance.

The VICE PRESIDENT. The resolution will be read.

The resolution (S. Res. 145) was read and referred to the Committee on Finance, as follows:

Whereas the opinions of the Supreme Court in recent decisions respecting the constitutional invalidity of the National Industrial Recovery Act clearly limit the authority of Congress to delegate its legislative power, and demonstrate that this authority was exceeded in section 350 of the Tariff Act of 1930 (relating to reciprocal foreign trade agreements): Therefore be it

Resolved, That it is the sense of the Senate that no foreign trade agreements shall hereafter be entered into pursuant to the authority contained in section 350 of the Tariff Act of 1930, and that any foreign trade agreements heretofore entered into pursuant to such section should be terminated at the earliest practicable date.

N. R. A. DECISION OF SUPREME COURT

Mr. DUFFY. Mr. President, I ask unanimous consent to have printed in the RECORD an editorial which appeared in today's Milwaukee Sentinel, written by Paul Block, entitled

"N. R. A. Decision Should Not Swerve Industry From Welfare Program."

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

[From the Milwaukee Sentinel of May 29, 1935]

N. R. A. DECISION SHOULD NOT SWERVE INDUSTRY FROM WELFARE PROGRAM

Although the decision of the Supreme Court in the N. R. A. case seems plain enough, it will probably take some time to analyze its full effect and to determine definitely what further laws, included in the new-deal program, will stand the test of constitutionality.

In the meantime, industry has a chance to prove voluntarily its good faith with regard to the social aims which were included in the N. R. A. Act.

Elimination of child labor, provisions for minimum wages, and maximum hours, which should have been covered in separate social-welfare legislation, must be continued, of course. Industry's program should also include the upholding of present-day wage scales and additional measures, such as old-age pensions and unemployment insurance.

Whether these ideal objectives can be secured by Federal law is not entirely clear at the moment, but business leaders should cooperate in every way possible to assure their accomplishment. They need not wait for possible legislation, but should act on their own initiative.

Certainly the Supreme Court decision must not be taken as an excuse for any backward step or lowering of such improved standards as have been brought about. We believe that this represents the viewpoint of the great majority of men in business, and accordingly no time should be lost in taking a strong and enlightened stand for a fair and comprehensive social program.

PAUL BLOCK, *Publisher.*

THE N. R. A.

Mr. LOGAN. Mr. President, I ask unanimous consent to have printed in the RECORD an article relating to the N. R. A. published this morning in the Washington Post and written by Raymond Clapper.

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

[From the Washington Post of May 29, 1935]

BETWEEN YOU AND ME—GLEE OVER N. R. A.'S END MAY BE A BIT PREMATURE; BUSINESS WANTS CODES; STATE LINES FADING

By Raymond Clapper

Most of the gleeful cheering over the Supreme Court's wrecking of N. R. A. and, what is less apparent to the casual reader, its drastic tightening of the interstate commerce clause is quite likely to prove premature.

Throughout the country editorial writers are sitting in their insulated ivory towers rhapsodically thanking God for the Supreme Court and for, as they put it, the restoration of the Constitution.

Later on they may want to revise their remarks.

The prospect is that the country will for a time attempt to operate N. R. A. on a voluntary basis. Business leaders all over the country are urging that. Even the head of the United States Chamber of Commerce, which was in convention here so recently viewing with alarm, urges that the essentials of the codes be carried on by common consent.

This cry is significant. It reveals that in spite of complaints over specific policies, in spite of the stupidities of N. R. A. administration, which were numerous enough, and in spite of its unwise attempt to extend its activities further than a centralized administrative agency at Washington could reach effectively, thoughtful business men long ago had come to realize that the basic ideas of N. R. A. were necessary. They had tried, aided by official winking at the antitrust laws, to put some of these ideas into operation. They do not want to go back to industrial anarchy now.

A voluntary N. R. A., however, probably will be as short-lived as were the pledges not to cut wages which business leaders made at the Hoover White House conference after the stock-market crash in the fall of 1929.

Business leaders are urging their respective groups to show that business can be self-governing. Senator HASTINGS, one of the most conservative of Republicans, says it can be done. If it can, many difficulties will have been solved, but the chances are against it. A cigarette war has begun in New York already. Liquor prices are being slashed. If the chiselers have so reformed that they will go along, then the millennium has arrived and, of course, we won't need any government at all.

The better guess is that it won't work any longer than a revival meeting keeps the village drunk on the water wagon and that before the snow flies the country will be clamoring for President Roosevelt to step in and do something.

Those who think that natural forces will take care of the situation if left alone overlook, as Professor Corwin points out, that even the Tories don't entirely trust in the operation of natural forces, but wear suspenders.

It is unfair for those who are disappointed with the decision to blame the Supreme Court. Although the Court went counter to the centralizing tendencies of John Marshall and sharpened State lines again, it has a written Constitution to deal with. The Constitution contains just so much rubber and no more. It is idle to quibble with the Court for not shutting its eyes to the English language. The Court cannot be expected to say the Constitution means yes when it says no.

Talk of blackjacking the Court by enlarging its membership collapsed when all nine Justices joined the decision. That subterfuge of packing the Court, a weak and uncertain one at best, becomes ridiculous to think of now.

Other proposals, more seriously considered, include suggestions that Congress have the power to reenact legislation over a Supreme Court veto and that in such cases the Court could not for a second time override. It is like the British House of Commons method of overcoming a House of Lords veto.

But such suggestions do not overcome the fact that a written Constitution exists. They are essentially schemes to get around the supreme law of the land. Eventually, the Constitution would become a mockery, a funny old curiosity, like George Washington's coach.

More serious thought is being given to the only sound course in the long run—amendment of the Constitution to bring it into line with modern conditions, on the theory that the Constitution follows the economic fact. The Court has, through judicial interpretation, followed the economic fact about as far as it can without rupturing the plain language of the document. Alteration of the language, not by judicial construction but by amendment, appears to many the inevitable alternative to sabotage by subterfuge.

For instance, the Supreme Court's strict interpretation of the interstate-commerce clause, holding that mining, manufacturing, and growing crops are local activities; that wages and hours regulations in such activities cannot be touched by the Federal Government, may be proper construction of the language of the Constitution. Still, we know that a cut of wages in a textile factory in Connecticut affects textile factories in Massachusetts. The Wheat Belt and the Cotton Belt spread over State lines. Farmers in one State are affected by what farmers do in other States, as we have been hearing through 15 long years of clamor for Federal farm relief. In every direction business, labor, and agriculture operate without regard to State lines. Your copper mine out in Arizona pays its dividends to owners in New York. Prices at some gasoline filling station out on the prairie and the wages of the attendant probably are fixed in some city office building 1,000 miles away.

State lines served well enough in the early days when travel and transportation were slow, when the majority of the people never went beyond their county line, when each community, as each household, was practically complete unto itself, and when manufacturing was in the small handcraft stage like the shoeshine parlor of today. But the State line has become almost imaginary except in the law books. Most of the States can't even feed their people without getting the money from Washington.

And if the Supreme Court is going to insist on a strict construction of the interstate-commerce clause, it is going to be on the spot some day.

National banks are protected from robbery by Federal law. Smart yeggs keep away from national banks and tap State banks only. That keeps the Federals off of their necks. But some time a bank robber is going to make a mistake and crack a national bank. Then he is going to hire a smart lawyer who will carry the case to the Supreme Court and argue that robbing a bank is not interstate commerce, that Uncle Sam is unconstitutionally interfering with his personal liberty.

Meanwhile there is still the possibility that the Supreme Court could save the country much trouble by delivering its vetoes as a President does, instead of sending someone to jail and then telling him a year or two later that the Government can't do that to him.

For years Massachusetts has in effect done exactly this. When the legislature is considering a law, it can ask the State supreme court for an advisory opinion. Occasionally this also is done in Maryland, but unofficially and off the record. The Federal Government already has moved in this direction with adoption of the declaratory-judgment law 2 years ago. Under that act, a petitioner can bring a test case without having actually to violate the law to find out whether he can be sent to jail. The Kerr-Smith Tobacco Act and the hog-processing tax are being tested in this manner now in the lower courts.

The Supreme Court caught the District of Columbia Trucking Code Authority off guard. On the same newspaper page that yesterday carried accounts of the wrecking of N. R. A. appeared an advertisement inserted by the Trucking Code notifying operators of trucks for hire that:

"The Trucking Code, signed by the President, is in full force for the second code year. The following requirements are contained in this law: Annual registration; display of insignia; filing of rates; maximum hours for labor and minimum wages. Truckmen are requested to register immediately for the second code year and comply with all other provisions of the code."

One nationally prominent N. R. A. champion was more fortunate. He was booked to deliver a speech Monday night to a code group, and his prepared manuscript ended on the following note of assurance:

"You can feel secure that the gains you have made will not be lost, that your code is secure, that for all the big black wolf may huff and puff against your N. R. A. house of refuge, it is built of bricks and not of straw and sticks, and that it is not going down this season."

After reading the newspapers he had to throw it all away.

THE PRESENT DIFFICULTIES OF THE SCHOOLS

Mr. GEORGE. Mr. President, I ask permission to have printed in the RECORD an article by Dr. Paul Mort, of Columbia University, on the subject of the Present Difficulties of the Schools.

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

THE PRESENT DIFFICULTIES OF THE SCHOOLS

By Dr. Paul Mort, of Columbia University

Schools do not usually close the moment their funds are exhausted. The American people believe profoundly in a continuous education for their children. Even under the most difficult financial conditions they struggle to keep the schools going. Heavy taxes are often imposed, but the resources of the community, or even of entire States, prove to be inadequate. After every economy has been effected and the school funds are completely exhausted, still the people commonly struggle on to avoid the last desperate measure of closing the school entirely. First, the school district tries to borrow money. If its credit is fairly good, it may run on borrowed money for several months, or even several years. When at last its credit is completely exhausted, the teachers, with loyal devotion to the welfare of their children, usually continue to serve for several months, and even several years, without pay. They either receive no salary whatever or are paid in practically worthless paper. The practical effect is that State and local governments have resorted to forced loans from teachers in order to carry on an essential public service.

Finally, however, every resort is exhausted. The parents have been providing board and lodging for the teacher, but teachers must have some money for other necessities of life. The fuel for the school building is used up. The various operating bills are unpaid. No more gasoline can be bought for the school bus. Desperate appeals now are made to Federal relief officials. At the best, there are weeks and usually months of delays for investigations and surveys before aid from the Federal Government is extended. Since the only Federal funds which have been used to keep schools open are those granted for relief purposes, the teacher must qualify to receive money as an object of relief.

Meanwhile the windows and the door of the schoolhouse have been boarded up and the people of the district realize that they have not only fallen upon evil days for the present but that their children also are to suffer in the future from an indefinite loss of educational opportunity.

It was at some such moment as this that the following letter was written by a 14-year-old girl in a Middle Western State recently:

"Last year we thought we were hard up because school closed April 1. This year I guess we aren't going to have school at all. Eighth-graders from our school and from Turtle River are trying to keep up our work. Pastor T's wife has us at the parsonage Friday mornings to hear our lessons. But most of the time is taken up with her asking how we do things here and comparing with the ways in Norway. Well, I guess I'll have to give up my plan to take high school. With the school closed (I feel like crying every time I see it with the doors and windows boarded up) I'll be too old before I am ready to go to high school. Do you think you could get on without a school or even a set of books? Grace has the arithmetic VIII, and I have the grammar. Teacher let us borrow those when school closed. I guess she had a hunch how this year was going to be. For all of us that go to the parsonage there is one history book. It's the one the Swanson's eldest boy had the year he went to town. It stops before the war, but I guess there hasn't been much since then except trouble, and I don't need a book to learn about that." (Amidon, Beulah, Schools in the Red. Survey Graphic 23: 266–270, 295–296, June 1934.)

How wide-spread are such conditions at present? In order to answer this question the United States Office of Education has collected figures from 25 States which show a total of 32,139 school districts that do not have sufficient funds to operate schools for the usual school term. In these districts there are approximately 42,200 schools, or 100,000 classrooms. The average reduction in the school term in these districts will be approximately 3 months. No less than 467 districts located in eight different States had no funds at all with which to begin the school year last September. (United States Department of the Interior, Office of Education, Financial Situation in Rural School Districts, 1934–35, Washington, D. C., March 1935. 10 p. mimeo.)

Closed schools are not the only disaster resulting from the lack of an adequate national-emergency program for the protection of the educational interests of all the children. Even the schools which manage to keep open, frequently do so by mortgaging the future so heavily that the district faces virtual bankruptcy. The fact that teachers must wait months and years for earned salaries inevitably affects their morale and tends to drive many capable teachers to lines of work where they can receive regular compensation. Many districts are unable to employ a sufficient number of teachers and, therefore, operate schools in which classes are dangerously overcrowded. Other schools have discontinued transportation of pupils with resulting decreases in attendance of as high as 50 percent. Many districts are so hard pressed for funds that they have not bought any teaching supplies or textbooks for years, nor have they spent any money for the repair and maintenance of the school building. In certain Arkansas counties more than one-third of the children have no textbooks whatever. (Arkansas State Department of Education, Biennial Report of the State Commissioner of Education, Little Rock, Ark. W. E. Phipps, Commissioner of Education, 1932–33, 1933–34, 184 p.)

Even the principle of free public education, in which the American people have long taken pride, has been repudiated. In Arkansas and several other States public schools, either openly or through subterfuge, are on a tuition basis. As early in the school year as November 1934 there were 77 Arkansas public schools charging tuition. These schools normally served 12,822, of whom 3,813, or more than a quarter, were being kept out of school on account of these charges.

Schools and education have certainly been affected by the depression itself to no less extent than any other interest of national significance. But the difference between schools and many other national affairs is not that schools have been harder hit but that no adequate steps have been taken by any agency of the national-recovery program to protect this particular phase of the general welfare.

The data given in tables A and B show the current conditions in the schools of a sampling of States. These data were submitted on March 24 and 25, 1935, by State superintendents of public instruction in response to a telegraphic inquiry (for these data I am indebted to Dr. William G. Carr, of the National Education Association):

TABLE A.—*Schools now closed*

Georgia (at the very least—verbal statement)	100
Idaho	2
Illinois	4
Maine	38
Minnesota	1
Mississippi	(1)
Nevada	14
Oklahoma	127
Oregon	2
Tennessee (verbal statement)	1,000
Texas	250
Washington	46
Total, 11 States (Mississippi not included)	1,584

TABLE B.—*Schools which would be forced to close if teachers' salaries were required to be paid in cash*

Arkansas (districts)	233
Georgia (counties—most of the rural schools)	100
Idaho	185
Illinois (in dire need)	196
Iowa	1
Maine	1,200
Mississippi (80 percent of all schools)	4,800
Missouri	1,100
Montana	650
Nevada	33
Oklahoma	450
Oregon (districts)	104
Tennessee (counties)	62
Texas (42 cities)	1,000
Wisconsin	150
Wyoming (in distressed condition)	50
Total, counting only one school per district (not including Georgia and Tennessee)	10,152

Of the 27 States replying, 11 have one or more closed schools, and 16 have schools which would be forced to close if teachers' salaries were required to be paid in cash.

CAUSES OF PRESENT DIFFICULTIES

Immediate causes of difficulties: The immediate cause of difficulties in the public schools is the break-down of the property tax. Ability to pay, reflected by property ownership in ordinary times, faded out from behind large masses of property both in the cities and in rural areas. Tax delinquencies, followed by tax sales, mounted. State legislatures removed penalties for tax delinquencies. This saved the homes and farms of vast numbers of people. But others seized the opportunity it afforded to withhold payment of taxes. Enlightened groups rose in most of the States requesting that the States supply new taxes based on better measures of ability which could carry the necessary burdens of Government during the depression. Some action was taken, but the efforts of these groups were largely offset by two forces:

State legislators, always reluctant to vote new taxes, were made even more fearful by the reaching down of the Federal Government into tax sources normally available to the States. The rapid succession of changes in the system of Federal taxes and the mounting expenditures of the Federal Government, with their threat of additional Federal taxes, either drove State legislators into an hysteria of fear or gave them an alibi for inaction.

The other force operating to offset the activities of groups seeking new taxes was the vast ignorance of the population in general regarding the real nature of the problem which they faced. The simple solution of the difficulty appeared to a large mass of people to be the cutting of public expenditure to the bone. They did not lack for leadership. They became the prey both of honest but unenlightened leadership for reductions at any cost, and to less altruistic leadership, financed by groups which had a selfish interest in maintaining the status quo. An epidemic of taxpayers' associations sprang up over the land. They were represented en masse at all Budget hearings. Their representatives brought

[1] A large number.

pressure to bear upon public officials at every possible point. Interestingly enough it is shown clearly by statistics that the schools for some reason suffered the greatest losses from this activity. For example, in the communities of New Jersey, from 1933 to 1934, local taxes for schools were cut 19.4 percent, while local taxes for municipal activities were cut only 2.4 percent. Part of the explanation for this lay in the willingness of the professionally led educational group to assist in making necessary adjustments. Part doubtless lay in the fact that schools, with the greater freedom from political control, found themselves in the depression deprived of the political protection available to the municipal activities.

Deeper causes of difficulties: Underlying the whole problem there were deeper causes. Fundamental defects in the financing of necessary government, including education, underlay our governmental structure even in the heyday of prosperity. The depression found us in a situation where the property tax, when compared with all other taxes levied by local, State, and Federal Government, was carrying an unfair share of the burden of government. When the depression came upon us, the property taxpayer, on whom the schools depended so largely for their support, was already a sick man, and for that reason all the more susceptible to the ills which came with the depression.

While the decade of the twenties had shown great headway in correcting this condition and equalizing the burden of support of local government among communities in the States, the depression found this process only well begun. The national survey of school finance pointed out the vast defects within States at this period. Approximately 10,000,000 children were in schools providing educational opportunities poorer than would be expected from any national standards that would have been built up had the States been freed from the internal defects of their structures of school support. But even if these corrections were made, the interstate comparisons made by the national survey of school finance demonstrated that the shortcomings of many of the States would still be intolerable. All measures of economic ability of the States, or their ability, severally, to pay taxes under the best devisable State tax systems, show vast differences among the States. The best possible State tax system would leave the educational programs in States like Mississippi, Alabama, South Carolina, and Arkansas far short of a defensible Nation-wide minimum. The situation cannot be corrected merely by tax reform within the States. All or most of the reasonable revenue from a reformed tax system in certain States would be required for a reasonable minimum program of education, leaving nothing or little for other government.

A study has just been completed at Columbia University by Mr. Leslie L. Chism, under the direction of Prof. John K. Norton, measuring the relative ability of the various States to finance public education. Estimates have been made of the amount of tax revenue which could be raised by each State under a modern tax system. The structure of the tax system used in the investigation follows that proposed in the second report on a plan of a model system of State and local taxation by a committee of the National Tax Association. The rates at which the various taxes composing this modern system of taxation are levied are those recommended by the committee of the National Tax Association when rates are designated by this committee. In the case of taxes for which no rates are specified in the model tax plan, the rates used are those recommended by acceptable tax theory or common practice. The estimates of the tax revenue which would have been raised in the various States by this modern tax system in the period 1922 to 1932 reveal certain interesting facts:

1. Normally 31 percent of all State and local taxes go to education. The smallest percentage in any State is 20.44; the largest is 43.40.

2. In Mississippi the amount of tax revenue raised by this system of taxation, from which all governmental enterprises must be financed, is less than the amount necessary to pay for the schooling of each child in average daily attendance at a cost per pupil equal to the average for the country as a whole.

3. The percentage of all tax revenue which would have been raised by the modern tax system during the period 1922 to 1932 required to finance a school program at an average cost per pupil is as follows for the 11 poorest States:

State	Percent of all tax revenue required for average expenses	Percent now made available
Mississippi	105.60	27.89
Alabama	83.49	33.52
South Carolina	82.87	31.41
Arkansas	74.74	31.41
Georgia	74.11	26.52
North Carolina	74.11	34.02
Kentucky	64.10	29.02
Tennessee	58.79	29.61
Oklahoma	57.22	35.18
Louisiana	52.22	25.91
Texas	50.03	27.99

NOTE.—Studies carried on independently by Dr. Mabel Newcomer, of Vassar, as a contribution toward my researches on the objective measure of need and ability of States, agree with Mr. Chism's findings.

No one can view the evidence without coming to a conclusion that national responsibility for the financing of a decent minimum program of education is inevitable if our great experiment in popular government is to have a chance at success. The condition of the schools as they would exist if each State were to put its house in order represents an emergency. It is a challenge to the ability of a free people to govern themselves, comparable in its importance, if not as apparent to the mass of the people, as was the Civil War.

All of these forces operating in an exaggerated fashion during the depression account for the vast denial of America's promise to those individuals who are unlucky enough to be children in this particular period.

THE SOLUTION TO THESE DIFFICULTIES

To solve these difficulties, for the emergency and permanently, requires us to put the financial house within the States in order: Tax reform—combined with equalization of burdens of local government. On the educational side, it means the setting up in each State of a decent minimum of educational opportunity below which no locality shall be allowed to go, and the reduction of the burden on property to the point where it can be responsive to taxation for the financing of local initiative, generally considered essential for the continuous bringing about of adjustment of our schools to new conditions.

Necessity for Federal aid: But the problem cannot be settled within the States. The solution requires that the Federal Government at least make funds available to the poorer States that will make a decent national minimum of education available to every child.

More extensive Federal aid: A significant beginning could be made with $100,000,000 a year of Federal aid going to the poor States. This should be distributed on an objective basis, considering the cost of a foundation program of education and the ability of the States to support such a program. States receiving the aid should be required to use the money received and their own funds in such a way as to guarantee the defined minimum of support to all communities in the State. Determination of both need and ability of the States should not be left to the discretion of the distributing agency. It should be specifically defined in the law. This is now possible as the result of researching being carried on currently under my direction, with the financial aid of the Columbia Council on Research in the Social Sciences.

Federal solution of a tax problem: Extension of Federal aid requires States to levy new types of taxes. In the levying of these new types of taxes interstate problems arise which are exceedingly difficult to meet. There is a growing belief on the part of tax experts that the real solution of the difficulty is for the Federal Government itself to operate as the tax-collecting agency, sending back to States, rich and poor, the returns of these new taxes, with consideration of the essential cost of government and the ability of the States to meet those needs. The task could be simplified and much the same results obtained if the Federal Government were to take over the responsibility for a foundation program of a major item of government such as education—a major item of government in which the people of the entire country are undeniably concerned.

A significant beginning on this could be made with $400,000,000 a year, distributed to all States without consideration of their ability to support education.

SUMMARY OF SOLUTIONS TO THE PRESENT DIFFICULTIES

These alternative solutions may be summarized as follows:

1. Federal aid to the poor States to the extent of $100,000,000 annually in the initial stages, associated with the levying of new taxes and steps for the equalization of burden within the States.

2. Federal aid to the extent of $400,000,000 in the beginning stages, financing approximately the same program of education, but bringing about tax reform through Federal action instead of by action in the individual States. It should be stipulated in the law that such funds must be used for the equalization of burdens within the States.

SUPPORT AND CONTROL

When this issue of Federal support for education arises the question of control comes into the forefront. Considerable research has been done on this problem in recent years. There is general agreement that control should be left to the States and to the communities, except insofar as certain external minimum requirements, such as length of term, equalization of burdens within the States, extent of training of teachers, etc., are concerned. This was typical of the early grants of Federal aid. The grants to the old Northwest Territory made by the Continental Congress, and extended and enlarged to the younger States, were grants made entirely without control. The effect they had on the development of education in our national life is incalculable. Similarly the Morrill Act grants of 1862 and 1889 were definite grants based on objective considerations carrying with them the single requirement that the colleges receiving such grants should provide military training.

When the Smith-Hughes Vocational Education Acts came into existence in 1917, they carried with them a degree of discretionary control which has had no small part to play in arousing the fear of Federal domination. All of our experience apart from this, some of which dates back nearly 150 years, has indicated that with objective measures and only objectively specified requirements, the undesirable features of control can be eliminated. Researches now nearing completion have extended the study of objective measures advanced by the National Survey of School Finance and by the many State studies made during the last decade, to the point that we now have available objective measures of the cost of a foundation program of education that will take

into account those elements which made costs for the same type of service vary from State to State. Among these elements are variation in sparsity of population and variation in living costs. Similarly, studies now well along will make it possible to take into consideration on a simple and objective basis relative ability of the States to pay taxes.

I refer above to the facts which point along the directions which I have outlined. These may be summarized as follows:

1. Studies of the variation in educational opportunities within States.
2. Studies showing the relative burden carried by the property tax.
3. Studies of the status in which States would find themselves educationally if they put their houses in order.
4. Studies of the relative ability of States to pay taxes under a model tax system.
5. Studies of objective measures of need and ability of States.

In addition, one studying this problem would be interested in the historical development of Federal aid. This is summarized in an excellent manner in Dean Russell's article "Boon or Bane", some of the high points of which I have included in the above. I am enclosing a reprint of this article.

It is my conviction that if President Roosevelt and the Congress were to see their way clear to enter into a careful consideration of the possible contributions of the new deal to this highly important problem of popular government, and could view it from the angle of their responsibility as representatives not of the school teachers of America but of the interests of the American public, a program for emergency action and a long-range program for the correcting of basic difficulties in our governmental structure would rapidly come to the fore.

THE BANKING BILL OF 1935

Mr. FLETCHER. Mr. President, I ask unanimous consent to have printed in the RECORD a radio speech delivered on Saturday, May 25, 1935, by Marriner S. Eccles, Governor of the Federal Reserve Board, on the subject of the banking bill of 1935.

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

I am grateful to the Washington Star for the invitation to speak in this forum.

I should like to talk to you as plainly as I can about the banking bill which is pending before Congress. In the brief time at my disposal I shall have to confine myself to the most controversial features of the bill and omit discussion of many other provisions of the bill which would, in my judgment, contribute toward recovery as well as toward the better-coordinated and more efficient administration of the Federal Reserve System.

I shall assume that you believe that in order to have our money system controlled for the benefit of the Nation as a whole and not for the benefit of special interests this control must be in the hands of a responsible body. If, after all that this Nation has gone through during the past 5 years, you still believe that we can leave our monetary system to chance or to fate, then it would be futile for me to try to persuade you that our present system can and should be improved.

With the banking cataclysm so fresh in our memories, we would be justified in saying that the Government had failed in its duty if it neglected to correct at least some of those apparent defects in our banking system which contributed to bringing untold distress to millions of our people and threatened to plunge our entire economy into the abyss. We are told that there is no emergency at this time which demands prompt action to correct these defects, but surely we should not wait for another crisis before taking the steps necessary to remedy obvious defects which painful experience has exposed. We should profit by the lessons we have learned from the emergency.

The real problem is the control over the volume and cost of money. The defects which I have mentioned are not due to the absence of powers of control, but to the fact that the present responsibility for the exercise of these powers is so diffused and divided as to hamper seriously, if not to frustrate, their effective use.

We need also to state the objective toward which these powers should be directed. At present there is no objective for monetary policy stated in the law. The banking bill as passed by the House of Representatives proposes a definite objective, which is, in a word, that monetary policy shall be directed toward the maintenance of stable conditions of production, employment, and prices, so far as this can be accomplished within the scope of monetary action.

I do not wish to be understood as believing that by monetary action alone we can eliminate all booms and depressions and achieve a permanent and unvarying stability. I do believe firmly, however, that by monetary means exercised promptly and courageously we can greatly mitigate the worst evils of inflation and deflation.

What are these powers of control to which I refer? There are three principal means of control which now exist. The first is the power to raise and lower the discount rate—that is, to determine the cost at which banks can borrow from the Federal Reserve banks and, consequently, to influence the cost at which the public can borrow from the banks. The importance of this power is apparent. By lowering or increasing interest rates it is possible to lower or increase the cost of doing business and, therefore, to have an influence over the contraction or expansion of business. This power is now vested in the Federal Reserve Board at Washington.

The second means of control to which I have referred is the power to raise or lower reserve requirements of the banks which are members of the Federal Reserve System. This power more directly influences the volume of money because under our law the amount of deposits that banks can create is limited in proportion to the amount of reserves they possess. Therefore, an increase or a decrease in the volume of reserves tends to increase or decrease the volume of deposits which are our principal means of payment, or money. Since 1933 this power has been vested in the Federal Reserve Board, but it can only be exercised when the President declares that an emergency exists and gives his approval. The responsibility for declaring an emergency should not be placed upon the President. Even if an emergency did not exist the declaring of it would almost certainly create one. The bill proposes to give the Federal Reserve Board the use of this most important instrument of control without requiring the President to declare an emergency, which might involve insurmountable political obstacles. The Federal Reserve Board should be in a position to exercise this power in the normal course of events for the very purpose of preventing an emergency.

The third means of control is what is known, perhaps somewhat mysteriously, as open-market operations. Without going into the details of this technical matter, open-market operations mean that the Federal Reserve banks, when they wish to increase the volume of money, can do so by buying Government securities in the open market. The money they pay for these purchases is added to the reserves of the member banks. Conversely, when the Reserve banks wish to diminish the volume of member bank reserves they can sell securities and in effect lock up the money paid by the banks for the securities. In this way they can directly influence the available volume of money.

At the present time the control over this power is distributed between a committee of 12 governors of the 12 Federal Reserve banks, who now have the responsibility for recommending purchases or sales; the Federal Reserve Board, which has authority to approve or disapprove the recommendations of the governors; and 108 directors of the 12 Reserve banks, who, in turn, have the right to determine whether or not they will buy or sell in accordance with the policy that has been recommended by the governors and approved by the Board. A more effective means of diffusing responsibility and encouraging delay could not very well be devised.

On this point I have recommended that the power over open-market operations be entrusted to the Federal Reserve Board, which consists of 8 members, 6 of whom are appointed by the President and confirmed by the Senate and 2 ex-officio members, the Secretary of the Treasury and the Comptroller of the Currency. The Board would be required, however, before taking action on open-market operations as well as on discount rates and reserve requirements, to consult with a committee of five governors selected by the Federal Reserve banks. In this way the responsibility for action will be unescapably fixed.

To my mind, the all-important thing is to place responsibility for the exercise of these three means of control in a clearly defined body and to state the objective toward the attainment of which that body shall exercise these powers. I do not wish to be dogmatic about how this body shall be constituted. I have recommended placing responsibility for the exercise of these powers in the Federal Reserve Board, which was established by law to serve the best interests of the Nation in banking and monetary matters. However, there are powerful groups which are irreconcilably opposed to this plan and wish to perpetuate the present unsatisfactory situation in which these powers cannot be effectively exercised.

This attitude is by no means characteristic of all of the bankers of the country. In all fairness, I wish to emphasize that in discussing this issue most of the leaders of the American Bankers Association have adopted a constructive and cooperative attitude. This is in sharp contrast with the attitude of a few bankers and business leaders, particularly in New York. Many of the bankers have frankly recognized the need and importance of the major changes proposed in the banking bill and have accepted them in principle.

With these bankers the issue over the banking bill narrows down largely to a question of the composition of the controlling body. Thus the American Bankers Association proposes that the exercise of monetary powers shall be entrusted to a committee consisting of the Federal Reserve Board, which shall be reduced to five members, and a committee of four governors selected by the governors of the 12 Federal Reserve banks. This plan would give the governors of the Federal Reserve banks, who are selected by directors two-thirds of whom are appointed by private bankers, 4 votes as against 5 votes for members of the Federal Reserve Board.

There has been considerable support for another proposal which would intrust the powers of determining monetary policy to a committee consisting of the Federal Reserve Board of eight members, as now constituted, together with five governors of the Federal Reserve banks. These governors would be selected with reference to a fair representation of the different regions of the country, 1 member to represent the Eastern Federal Reserve districts, 1 the Middle West, 1 the South, 1 the far West, and 1 to be selected at large.

It is not for me to determine in whom these powers shall be vested. My recommendation was that they be vested in the Federal Reserve Board, with a committee of five governors acting in an advisory capacity. I have just mentioned two other proposals.

It is for the representatives of the people of the United States in Congress to determine whether they want to give these powers to an independent public body, to private interests, or to a combination of the two. The one principle on which I feel there can be no reasonable ground for disagreement is that the powers must be vested in a clearly defined body which will have adequate authority and full and unescapable responsibility for the use of these important powers.

As I have said, the purpose of the bill is not to create new powers, but to place existing powers in a responsible body where they may be effectively exercised. Against this proposal the cry of political control has been raised. This is not a new cry. It was raised against the original Federal Reserve Act more than 20 years ago. It was raised by about the same interests which are now resisting the passage of this bill—the same interests that have repeatedly been against all progressive social and economic legislation, such as the income tax, even when it was proposed to make it as low as 2 percent; against child-labor legislation; against the Federal Trade Commission and the Federal Power Commission; the Securities Exchange Commission; against pensions of all kinds, both State and national; in short, against all that enlightened legislation which has long since been accepted and now forms the basis of such economic and social advance as we have achieved.

If it is fair to charge that the Federal Reserve Board is political, then the same accusation must be made against the Interstate Commerce Commission, against the Federal Trade Commission, and against other governmental bodies, the members of which are nominated by the President and confirmed by the Senate. Experience has demonstrated that these bodies have consistently acted not for political advantage but in the public interest.

Some of the opponents of the bill are raising all the familiar bugaboos that they have so often trotted out in the past whenever any attempt has been made in the interests of the country as a whole to limit their influence in national affairs. I think that Mr. Walter Lippmann well stated the tone and temper of these irreconcilable opponents when, in a recent article, he referred to their hysterical methods. He pointed out that they tell us in one breath that we are threatened with a grave emergency because of the dangers of uncontrollable inflation, while in the next breath they tell us that no emergency exists which requires the enactment of this legislation, designed as it is to enable us to deal effectively with just such an emergency. As Mr. Lippmann says with reference to the inconsistency of these opponents, "It does not make sense. If we are faced with these hideous dangers, are we not criminally negligent if we fail to fix clearly the responsibility for averting them?"

As I say, this cry of "wolf" is not new. I have had occasion to delve into the history of banking legislation, and I note with some degree of consolation that the Federal Reserve Act was denounced in language so nearly identical with that being used today by much the same organized opposition, that unless you knew the dates you could not distinguish between what they said more than 20 years ago and what they are saying today.

Then, as now, the same interests were crying inflation and political control. Then, as now, they demanded full control. Indeed, they undertook to persuade President Wilson that they should have banker representation on the Federal Reserve Board. Senator GLASS, of Virginia, in his authoritative and illuminating book on the Reserve System entitled "An Adventure in Constructive Finance", tells of how these bankers made their arguments to Mr. Wilson, and, according to Senator GLASS, when they had finished, President Wilson said quietly:

"Will one of you gentlemen tell me in what civilized country of the earth there are important government boards of control on which private interests are represented?"

"There was," wrote Senator GLASS, "painful silence for the longest single moment I ever spent; and before it was broken, Mr. Wilson further inquired:

"'Which of you gentlemen thinks the railroads should select members of the Interstate Commerce Commission?'"

And Senator GLASS adds in his book:

"There could be no convincing reply to either question * * *."

Let me quote another pertinent paragraph from this illuminating book:

"While the Federal Reserve bill was pending", wrote Senator GLASS, "it was mercilessly condemned in detail by certain interests. Where there was any praise in these quarters, it was faint enough to damn. This hostile criticism reflected not alone the attitude of bankers, as the class which imagined that it was chiefly affected by the proposed readjustment; but it voiced the disapprobation of those business groups which are most readily impressed by banking thought. This was not surprising since the phenomenon was and is of frequent recurrence."

Unfortunately this is all too true. You are witnessing the same phenomenon again today. You are hearing the same cry that the banking bill means reckless inflation; that the purpose of the bill is to obtain control of the banks so that the administration may be able to finance an endless series of Government deficits. The complete answer to this bugaboo is that if the administration had such a purpose it would not need this bill, for this or any other administration will always find means to raise the funds which the representatives of the people in Congress have appropriated.

As a matter of fact the administration has at its command, in the stabilization fund and under the so-called "Thomas amendment", more than five billions of unexpended dollars. Demand for the purchase of Government bonds is so great that the average interest rate has dropped by more than 25 percent since the administration took office. In the face of these facts, do you believe the opponents of this bill when they tell you that the administration wants the banking bill enacted in order to enable it to finance governmental deficits?

The organized opposition to the banking bill wants to delay its passage, to leave matters as they are. Our opponents profess to believe that the issue should be submitted to a commission for further study. But manifestly this is not an issue which will be settled by further study. It is not an issue as to facts which need to be gathered together and pored over by another commission. Unless your memories are shorter than I believe them to be, you know the essential facts. The issue is plain. It is an issue of fundamental belief. It is whether such powers as we possess over monetary policy, which affects the welfare of all of us, shall be definitely placed in a body which shall have not only the necessary means of control but the fixed responsibility for its exercise, or whether these powers should be left as at present, where they can neither be effectively used nor the responsibility for their exercise definitely fixed. It calls for a decision by the people of the United States through their representatives in Congress. It is my sincere conviction that this bill is in the interest of the banking system as a whole, because it will enable it better to serve the public interest.

I thank you.

THE BANKING BILL—ARTICLE BY A. P. GIANNINI

Mr. FLETCHER. Mr. President, I ask unanimous consent to have printed in the RECORD an article by A. P. Giannini appearing in Today for June 1, 1935, entitled "I Favor the Banking Bill."

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

I FAVOR THE BANKING BILL

By A. P. Giannini

(To provide the country with a sound, flexible currency is a public trust; private bankers should serve the business interests of depositors, borrowers, stockholders)

If bankers will stick to their jobs as financial middlemen, they will earn back the confidence they have lost. In the past their responsibility for monetary and credit policies has been at best a fiction, for they have of necessity left these matters to certain New York private banks with international ramifications, whose influence has been dominant and whose first duty was neither to the public nor to the other banks, but to their own stockholders. The banks themselves, as well as the public, will be better represented if they place this responsibility on a specially constituted and qualified public body.

No business more vitally affects the public interest than banking. Bankers meet a large part of the borrowing needs of the country. They provide the agencies through which the bulk of the country's payments of all kinds are made. They create what has been aptly termed "deposit currency" or "check money", which is the chief medium of exchange. An expansion or contraction of deposit currency concerns not only the bankers but everybody in the community. The violent fluctuations in the amount of deposit currency may not make booms and depressions—that question is highly controversial. But everyone does agree that these fluctuations accentuate them.

I believe that a majority of bankers feel as I do, although there is a popular impression that the bankers of the country are opposed as a class to the banking bill of 1935. However, while a special committee of the American Bankers' Association criticized the bill, this committee felt that if certain amendments proposed by it could be enacted, the bill would then be beneficial. Most of these amendments have been adopted. Aside from this official expression, a number of prominent individual bankers have opposed the bill. Analysis of their objections reveals the fact that their opposition is directed almost entirely to those provisions which place in the Federal Reserve Board the control of national monetary policies.

PRIVATE AND PUBLIC FUNCTIONS

This raises a fundamental issue as to whether the banking system of the country should be left exclusively to the direction of a few private bankers or whether there are some features of the banking system which by nature are of public rather than of private concern. Certainly, as regards the function of making loans in each community, supplying currency, handling and clearing checks, and other such service functions, banks are engaging in strictly private business, and should be left entirely to their own talents of management and control.

I think, however, that the assumption by private bankers of the responsibility for functions which in every other country are matters of public concern would be dangerous to the future of private banking in this country. Private banking is sufficiently on the defensive without having to bear the onus of blame for the mistakes of those few bankers who are in a position to determine monetary policy. Let us, as bankers, strive to serve the interests of our depositors, borrowers, and stockholders as ably as we can, and place the responsibility for the determination of what is really public policy unequivocally in a public body. That is not only the proper attitude for bankers to take but, from a purely selfish point of view, it is the most prudent. The sooner we recognize that to provide the country with a sound and flexible medium of exchange is a public trust and not a private privilege, the better it will be for us.

I take no stock in the political-domination argument against the banking bill. The Federal Reserve Board is a political body only in the sense that its members are nominated by the President and confirmed by the Senate. So are the members of the Supreme Court. Nor does it follow, as the critics of the bill assume, that because the Federal Reserve Board is in this sense a political body it must necessarily be subservient and inefficient. It has not been so in the past. It is not true of many other public bodies with which I have had contact. In fact, I should say that from the point of view of honesty and efficiency, public service compares favorably with private. For one thing, public bodies operate under the full glare of publicity and their shortcomings are public property. When in recent years the floodlight of publicity was turned on various private activities, including banking, the disclosures were far from reassuring.

I am fully aware that public as well as private bodies may be subservient and inefficient. I think the framers of the bill were likewise aware of this and did everything they could to insure that the Federal Reserve Board would be both an efficient and an independent body. Enhanced prestige should follow enhanced authority and responsibility. The new pensions and higher salaries, the new qualifications for members of the Board, and the newly defined objective of policy should all contribute to the efficiency and independence of the Board.

The only feature of the present make-up of the Federal Reserve Board which could properly be pointed to as "political control" is the presence on the Board of two ex-officio members who are habitually appointed by each incoming President from his leading political supporters, namely, the Secretary of the Treasury and the Comptroller of the Currency. These members, however, hold office by virtue of the existing law and not through the proposed bill. If a further attempt to insulate the Board from political influence is desirable, then consideration should be given to the suggestion of the special committee of the American Bankers' Association that these two ex-officio members be removed from the Board. Personally, with Reserve Board members appointed for 12 years, or 8 years beyond the Presidential term, and with no provision for removal of members except for malfeasance, I do not see where this added precaution is made necessary.

I favor the banking bill for other reasons. It facilitates the entrance of nonmember banks into the Reserve System and thereby contributes to that greatly needed reform, the unification of banking. The House of Representatives has voted to remove the provision that nonmembers shall not share in deposit insurance after July 1, 1937. This I very much deplore. The cause of banking reform in this country will be immeasurably harmed unless the action of the House is reversed. I do not, however, wish to see existing small banks harmed or legislated out of business, and I would favor some way by which, as to existing small banks only, the requirement of Reserve membership could be so reduced or the time for compliance so extended as to make membership not only possible but desirable.

Another reason why I favor the bill is that it recognizes that banks should meet the requirements not only of commercial borrowers, whose loans constitute a small portion of banking assets, but also the requirements of other borrowers for other types of loans. Most of the community's credit needs are for periods longer than 3 months. Even in the best of times the amount of such short-term paper has been insignificant compared with total bank deposits. It has now almost reached the vanishing point. The banks have plenty of money on hand, including a large part of the savings of the community, to make longer loans. If they do not meet the borrowing needs of their communities, they can hardly complain if other agencies, including the Government, meet such needs.

GOVERNMENT LENDING A THREAT

The development of Government lending agencies constitutes another threat to the future of private banking in this country, and for that reason all banks should welcome those provisions of the bill which shift the emphasis from the maturity of loans to their soundness, and thus make it safer for banks to serve their communities with the type of credit accommodation they actually require. Had the emphasis in the past been on sound assets rather than rigid technical requirements, many of the rigors of the depression might have been avoided. As Dr. E. A. Goldenweiser, the statistical expert of the Reserve Board, has testified, there was not at one time sufficient paper meeting these technical requirements to back the necessary note issue, and the monetary structure of the Nation was temporarily jeopardized, and, as he has further testified, with banks failing in large numbers the Reserve banks were legally unable to assist them because of technical requirements that bore no relation to the borrowing needs of the Nation. It is neither customary in practice elsewhere nor sound in theory to surround the discount operation with rigid requirements which the business needs of the country are sure to outgrow.

There is much irony in the fact that those big city banks which are now righteously insisting that loans should be restricted to commercial borrowers are the very ones who have most widely departed from this principle and have for years placed the bulk of their funds in security loans and investment.

The bill represents, I am convinced, a distinct forward step. It is not a radical document sprung from the brains of theorists, but it has its roots in 20 years of practical experience with the Federal Reserve Act as tested by the worst banking depression in history.

DECISIONS OF THE SUPREME COURT IN RECENT CASES

Mr. LA FOLLETTE. Mr. President, I have been requested to ask to have placed in the RECORD a statement signed by four Members of the House of Representatives relating to the recent decisions of the Supreme Court.

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

We believe that the recent decisions of the Supreme Court declaring the Railway Pension Act, the National Industrial Recovery Act, and the Frazier-Lemke Act unconstitutional have clarified the befogged atmosphere caused by the gold-clause decision.

The Court has clearly defined the powers of Congress to deal with the economic and social problems that confront America today. In no uncertain terms it has served notice on Congress that the Constitution is not a flexible document, to be interpreted liberally and in the light of present-day conditions but rather an instrument that must be interpreted with relation to the time, conditions, and ox-cart economy of the days when it was written.

The present relief crisis will inevitably be aggravated as a result of these decisions. Fortunately, Congress has apparently been left free to provide for the 35,000,000 people for whom there seems to be no place in the present economic system. Congress also has the power to tax. We therefore recommend that to meet this crisis both of these powers be exercised for immediate drastic increases in income, estate, and gift taxes to raise revenue sufficient to put the unemployed to work at prevailing wages.

Two courses are left open to Congress:

(a) We may enact patchwork new-deal legislation designed to circumvent the limitations placed on Congress by these decisions. Any such attempt would be a dishonest and futile gesture toward meeting the present problem.

(b) We can recognize the fact that twentieth-century problems cannot be seriously dealt with under the eighteenth-century interpretations of the Supreme Court, and take steps to call a convention to revise the Constitution in the light of present-day requirements. This is a procedure provided for in the Constitution itself. Its authors clearly foresaw that the instrument developed to apply to an agricultural economy in a few sparsely settled States might have to undergo great changes to meet the problems of the future.

The great problem of the twentieth century is how to organize our economy so that the abundance which our country is capable of producing can be enjoyed by all citizens. Quite recently a Government-financed survey brought out the fact that an average income of $4,370 per family is possible in the United States, if our productive resources were fully used.

The American people are interested in this fact. They are becoming generally aware of the truth that there would be more than enough to go around, if we were to turn our efforts to the production of goods rather than to limiting production. They are beginning to think in terms of an economy of abundance, and they are asking what the President and the Congress propose to do in order to bring about this economy of abundance.

In 1787 the founding fathers called the first Constitutional Convention and courageously wrote a new instrument realizing the era of political liberty and democracy which had grown out of feudalism. In full harmony with the spirit of the founders, we now urge upon the State legislatures that they take immediate steps for the calling of a second constitutional convention to rewrite the basic law in order to realize the new age of economic liberty and democracy which lies before us if we have the courage and intelligence to strive for it. We hold that this is essential to the carrying out of the basic aims of the Constitution, to "form a more perfect union, establish justice, provide for the common defense, insure domestic tranquillity, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity."

VITO MARCANTONIO, *New York.*
GEORGE J. SCHNEIDER, *Wisconsin.*
ERNEST LUNDEEN, *Minnesota.*
THOMAS R. AMLIE, *Wisconsin.*

POWER OF SUPREME COURT TO DECIDE QUESTIONS OF CONSTITUTIONALITY—BRIEF BY MORROW H. MOORE

Mr. BONE. Mr. President, in view of the wide-spread interest which is sure to follow recent decisions of the Supreme Court of the United States involving the constitutionality of the National Recovery Act and the Railway Pension Act, I think it might be well that those who are interested in the question of the power and right of the Supreme Court to sit in judgment on the constitutionality of acts of the Congress of the United States be advised concerning some of the cases which have been decided respecting that matter.

I have in my hand a brief prepared by counsel for one of the Federal agencies touching that subject. It is a very interesting brief. It deals with the power of the Court to pass on legislation enacted by Congress.

We face an unhappy situation in view of the fact that if the logic of the recent cases and those that have preceded

them is to be followed in subsequent decisions of the Court, it may destroy the Wagner labor-disputes bill, the A. A. A., the T. V. A., the Black 30-hour bill, the Guffey coal bill, and, what is worse, possibly hopelessly involve the social security bill which is now pending, and which, if it should become law, might conceivably be utterly destroyed by that theory of law.

In view of the fact that this subject involves the welfare of a hundred million people, who are going to look toward Washington with a critical eye, I ask at this time that this brief, which was prepared by Mr. Morrow H. Moore, be printed in the Appendix of the RECORD, so that those in the United States who are interested in this vital phase of law may read it.

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

In response to the question, "Suppose Congress takes away original jurisdiction from both Federal courts and State courts in constitutional questions, may a party raise the constitutional validity of a Federal statute by a bill of exceptions on writ of error (writ of error was abolished and appeal substituted therefor, and statutes governing writ of error made to apply to appeals by act of Jan. 31, 1928, 45 Stat. 54, as amended Apr. 26, 1928, 45 Stat. 466, (28 U. S. C. 861a, 861b)) from a State supreme court to the United States Supreme Court?" My answer, assuming the premises, is that a party would not be able to raise a question as to the constitutional validity of a Federal Statute by a bill of exceptions on a writ of error from a State supreme court to the United States Supreme Court.

I. CONSTITUTION AND STATUTE APPLICABLE

The pertinent provisions of the Constitution are to be found in article III, establishing the judiciary.

Section 1 provides: "That the judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may, from time to time, ordain and establish. * * *"

Section 2, clause 1: "The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be, under their authority * * *."

Section 2, clause 2: "In all cases affecting ambassadors or other public ministers and consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction. In all other cases before mentioned the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exception and under such regulations as the Congress shall make."

Pursuant to section 2, clause 2, of article III, section 25 of the Judiciary Act of September 24, 1789 (1 Stat. 73), was passed, and, after various changes which did not materially alter its context, is now included as section 237 of the Judicial Code (28 U. S. C., sec. 344) and provides for review of writ of error by the Supreme Court of the decisions of State supreme courts in the following language:

"Appellate jurisdiction of decrees of State courts; certiorari. (a) A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of the United States, and the decision is against its validity; or where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error. The writ shall have the same effect as if the judgment or decree had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such State court, and may, in its discretion, award execution or remand the cause to the court from which it was removed by the writ." (Paragraph (b) provides, among other things, for review on certiorari of a judgment of the highest State court where the Federal claim is either sustained or denied.)

II. ARTICLE III DEPENDS UPON CONGRESSIONAL ACTION FOR EXECUTION

Article III is not self-executory, and while the Supreme Court is expressly provided for, it requires for its existence an organizing act passed by Congress. This is clearly brought out by discussion by Chief Justice Ellsworth and Justice Chase when counsel for defendant in error, while arguing *Turner* v. *Bank of North America* (4 Dallas, 8, 10, in 1799), was interrupted by Chief Justice Ellsworth with the inquiry—"will it be affirmed that in every case, to which the judicial power of the United States extends, the Federal courts may exercise jurisdiction, without the intervention of the legislature, to distribute and regulate the power?"

And Justice Chase replied:

"The notion has frequently been entertained that the Federal courts derive their judicial power immediately from the Constitution, but the political truth is that the disposition of the judicial power (except in a few specified instances) belongs to Congress. If Congress has given the power to this Court, we possess it, not otherwise; and if Congress has not given the power to us or to any other court, it still remains at the legislative disposal. Besides, Congress is not bound, and it would perhaps be inexpedient to enlarge the jurisdiction in Federal courts to every subject in every form which the Constitution might warrant."

This language was quoted with approval of Justice Grier in *Sheldon* v. *Sill* (8 How. 441) in 1850.

The doctrine was further asserted in *McIntire* v. *Wood* (7 Cr. 506), *Kendall* v. *United States* (12 Pet. 616), *Cary* v. *Curtis* (3 How. 236 (1845)). Justice Daniel, affirming the doctrine, stated in *Cary* v. *Curtis:*

"To deny this possession would be to elevate the judicial over the legislative branch of the Government and to give to the former powers limited by its own discretion merely."

In *Linton* v. *Stanton* (12 How. 423 (1851)) Chief Justice Taney said:

"We have no jurisdiction over the judgment of a State court upon a writ of error except in the cases specified in that section." (Sec. 25 of the Judiciary Act of 1789.)

To the same effect is *Caperton* v. *Ballard* (14 Wallace, 238 (1871)), in which Justice Davis said:

"There must be a Federal question within the terms of that section to enable us to review the decision of a State tribunal."

In *Martin* v. *Hunter* (7 Cr. 602 (1813)) the right of the Supreme Court to declare State statutes in conflict with the Constitution, laws, or treaties, under section 25 of the Judiciary Act, and consequently void, was established. Judge Roane and the other judges of the Court of Appeals of Virginia, whose opinion has been reversed, unanimously declined to obey the mandate of the Supreme Court and each judge rendered a separate opinion (Beveridge, Life of Marshall, vol. 4, p. 156). Judge Roane argued that section 25 of the Judiciary Act violated the Constitution in giving national courts power over State courts, and Monroe and Jefferson, to whom he sent his opinion, approved it (ibid, p. 160).

The case was once more taken to the Supreme Court on writ of error and once again the jurisdiction of that Court over the State courts, under section 25, was approved (1 Wheaton, 304 (1816)). While Chief Justice Marshall declined to sit on the case because of his brother's interest in the subject matter, it is thought he practically dictated the two opinions announced by Story, and Story admits he had concurred "in every word of the opinion." (Beveridge, Life of Marshall, vol. 4, p. 164.)

Webster, on January 10, 1825, in the House of Representatives, said:

"The judicial power is indeed granted by the Constitution; but it is not, and cannot be, exercised till Congress establishes the courts by which it is to be so exercised." (Elliot's Debate on the Federal Constitution, vol. 4, 2d ed., p. 478.)

III. ONCE HAVING GRANTED APPELLATE JURISDICTION TO THE SUPREME COURT CONGRESS MAY LATER WITHDRAW IT

After Chief Justice Marshall had decided, in *Cohens* v. *Virginia* (6 Wheaton, 264 (1821)), involving the question whether a Virginia statute prohibiting a sale of lottery tickets conflicted with an act of Congress permitting sales of lottery tickets in the District of Columbia, that the Supreme Court had appellate jurisdiction from a final judgment of the highest court of a State, a strong demand emanated from Virginia that section 26 of the Judiciary Act be repealed. (Warren, Supreme Court, vol. 1, p. 552.)

Many attempts have been made in Congress either to repeal section 25 or so to modify it as to allow a writ of error to either party without regard to the manner in which the question was decided by the highest State court. On such a bill Webster reported that it was not expedient to repeal or modify the section (Annals, 18th Cong., 1st sess., Jan. 30, 1824, vol. 41, col. 1291).

On a bill providing for outright repeal, introduced in the Twenty-first Congress, second session, the majority report of the committee was in favor of such action, on the ground that section 25 was unconstitutional because the Constitution gives the Supreme Court the right to entertain appeals only from such inferior courts as Congress may establish (H. Rept. 43, 21st Cong., 2d sess., Cong. Deb., vol. 7, Appendix, pp. 77–81). But the minority report warned that repeal would seriously endanger the existence of the Union, and quoted the reasoning of Chief Justice Marshall in *Cohens* v. *Virginia* to show the jurisdiction of the Supreme Court could be extended by law to opinions of State supreme courts (ibid, p. 85).

According to *Ex parte McCardle* (7 Wall. 506 (1868)), it would seem that the appellate jurisdiction of the Supreme Court may be taken away by Congress at will.

In this case, McCardle brought a petition in the circuit court of the United States for a writ of habeas corpus, alleging an unlawful restrain by the military authorities. He had published incendiary and libelous articles in a newspaper and had been incarcerated by the military authorities pending trial by the military commission, under authority of certain acts of Congress passed during the Civil War. On disallowance of his petition in the lower court he prosecuted an appeal to the United States Supreme Court under the act of February 5, 1867, providing that the courts of the United States should be empowered to grant writs of habeas corpus in cases where any person may be restrained of his liberty in violation of the Constitution, or any treaty or law of the United States, and that from the final decision of any court inferior to the circuit court appeal might be taken to the circuit for the district in which the cause was heard and from the judgment of the circuit court to the Supreme Court of the United States. The case was argued in the Supreme Court of the United States, and, pending decision by that court, a law was passed by Congress, on March 27, 1868, providing that so much of the act of February 5, 1867, as authorized an appeal from the judgment of the circuit court to the Supreme Court, or the exercise of any such jurisdiction by the Supreme Court on

appeals which had been, or might thereafter be, taken, was repealed.

Counsel for McCardle argued that the Supreme Court is "coexistent and coordinate with Congress and must be able to exercise the whole judiciary power of the United States, though Congress passed no act on the subject", and asked, "Suppose it [the Judiciary Act, 1789] were repealed. Would the Court lose, wholly or at all, the power to pass on every case to which the judiciary power extended?"

The Supreme Court, speaking through Chief Justice Chase, dismissed the appeal for want of jurisdiction, and said:

"It is unnecessary to consider whether, if Congress had made no exceptions and no regulations, this Court might not have exercised general appellate jurisdiction under rules prescribed by itself. For among the earliest acts of the First Congress, at its first session, was the act of September 24, 1789, to establish the judicial courts of the United States. That act provided for the organization of this Court, and prescribed regulations for the exercise of its jurisdiction."

While it was known that the restrictive act had been passed to prevent the Supreme Court from determining the constitutionality of reconstruction measures, the Chief Justice said:

"We are not at liberty to inquire into the motives of the Legislature. We can only examine into its power under the Constitution; and the power to make exceptions to the appellate jurisdiction of this Court is given by express words. What, then, is the effect of the repealing act upon the case before us? We cannot doubt as to this. Without jurisdiction, the Court cannot proceed at all in any cause. Jurisdiction is power to declare the law; and when it ceases to exist, the only function remaining to the Court is that of announcing the fact and dismissing the cause. And this is not less clear upon authority than upon principle."

The Chief Justice also referred to *Durousseau* v. *United States* (6 Cr. 307 (1810)), in which Chief Justice Marshall had said:

"The appellate powers of this court are not given by the judicial act. They are given by the Constitution. But they are limited and regulated by the judicial act, and by such other acts as have been passed on the subject. When the first Legislature of the Union proceeded to carry the third article of the Constitution into effect, they must be understood as intending to execute the power they possessed of making exceptions to the appellate jurisdiction of the Supreme Court" (p. 313).

In *Ex parte Yerger* (8 Wallace, 85 (1868)), Chief Justice Chase, referring to the McCardle decision, said of the statute which there ousted the Supreme Court of jurisdiction:

"Nor will it be questioned that legislation of this character is unusual and hardly to be justified except upon some imperious public exigency.

"It was, doubtless, within the constitutional discretion of Congress to determine whether such an exigency existed; but it is not to be presumed that an act, passed under such circumstances, was intended to have any further effect than that plainly apparent from its terms" (p. 104).

Nevertheless, the Court admitted the power of Congress to diminish the appellate jurisdiction of the Supreme Court.

No less authority than Marshall, while he was Chief Justice, predicted the repeal of the twenty-fifth section of the Judiciary Act, in a letter to Story on January 8, 1830:

"It requires no prophet to predict that the twenty-fifth section is to be repealed, or to use a more fashionable phrase, to be nullified by the Supreme Court of the United States. I hope the case in which this is to be accomplished will not occur in my time, but accomplished it will be at no very distant period" (Charles Warren, The Supreme Court of the United States, vol. 1, pl. 727).

But he did not question the constitutionality of such repeal.

The Chief Justice had just handed down the decision in the case of *Craig* v. *Missouri* (4 Pet. 410) holding that a Missouri statute authorizing a form of State loan certificate violated the constitutional provision against the issue of bills of credit by a State, and was therefore invalid. Senator Benton, of Missouri, had indignantly stated in his argument before the Court that "the State of Missouri had been 'summoned' by a writ from this Court under a 'penalty' to be and appear before this Court. In the language of the writ she is 'commanded' and 'enjoined' to appear. Language of this kind does not seem proper when addressed to a sovereign State, nor are the terms fitting, even if the only purpose of the process was to obtain the appearance of the State." (Warren, the Supreme Court, p. 725.)

SUMMARY

Article III, section 2, clause 2, gives the Supreme Court appellate jurisdiction "with such exceptions and under such regulations as the Congress shall make." Inasmuch as article III is not self-executory, the Supreme Court would apparently not have any jurisdiction without an act of Congress conferring jurisdiction upon it (see Opinions of Chase, J., in *Turner* v. *Bank of North America*, 4 Dallas, 8; Daniel, J., in *Cary* v. *Curtis*, 3 How. 236; Chase, J., in *Ex parte McCardle*, 7 Wallace, 506).

It is clear, however, that once Congress does confer appellate jurisdiction on the Supreme Court only such appellate jurisdiction as is conferred may be exercised; and it is equally clear that Congress may diminish the appellate jurisdiction of the Supreme Court (*Durousseau* v. *United States*, 6 Cr. 307; *Ex parte McCardle*, 7 Wallace, 506).

Having the broad authority to diminish the Supreme Court's appellate jurisdiction, it may do so on any ground which it wishes, having due regard to *Ex parte Yerger*, 8 Wallace, 85.

Section 237 of the Judicial Code is the only authority conferred upon the Supreme Court for entertaining on writ of error (appeal) a decision of the highest court of the State, and if that were repealed there would be no authority under which the Supreme Court could take jurisdiction in such a case.

Respectfully submitted.

MORROW H. MOORE.

REGULATION OF PUBLIC-UTILITY HOLDING COMPANIES

The VICE PRESIDENT. The question is on the motion of the Senator from Montana [Mr. WHEELER] that the Senate proceed to the consideration of Senate bill 2796, commonly known as "the public-utility holding company bill."

Mr. HASTINGS. Mr. President, I merely desire to invite the attention of the Senate to one particular of the bill. The original bill was introduced in the Senate on February 6, 1935, and was known as "S. 1725." Upon that bill hearings were held, and it was in relation thereto that the committee met in executive session and considered the bill. At the conclusion of the consideration of S. 1725, my understanding is the committee concluded that it was better to introduce an entirely new bill which should include the amendments which had been approved by the committee.

That may not be an unusual course, but in my experience here I have observed that when a bill is reported to the Senate for consideration, it has included in it the amendments which have been made by the committee. The advantage of that procedure is that when the bill is taken up in the Senate for consideration Senators are enabled to examine and determine in detail the amendments which were adopted by the committee and the approval of which by the Senate is then under consideration.

When the pending bill, which is now sought to be brought before the Senate, shall be taken up for consideration we shall not follow the usual practice and decide whether or not the Senate agrees with what the committee did, but we shall have before us a bill without a single amendment in it, a bill comprising 150 pages, and we shall be taking up a bill which I know many members of the committee have not even read.

I invite attention to this matter now for the particular purpose of having the Senate understand that when the bill is brought before us for consideration, unless Senators are prepared with amendments to offer, the only question before the Senate will be the engrossment, third reading, and passage of the bill itself. My own feeling is that many Members of the Senate would like to have an opportunity to examine the bill in the light of two of the Supreme Court decisions rendered last Monday. I am quite certain that the bill in its present form is unconstitutional, and at some time before it shall finally be passed I will present a motion to the Senate that it be sent to the Judiciary Committee for the purpose of obtaining the opinion of that committee upon its constitutional phases.

Mr. President, I make these observations at this time because of the importance of the measure and because, in my judgment, Senators will be placed in an embarrassing position by having presented to them a bill without being able to ascertain, from an examination of the bill itself, what particular amendments have been adopted by the committee.

Mr. WHITE. Mr. President, I desire to say a brief word about the situation. I find myself in concurrence with much that the Senator from Delaware [Mr. HASTINGS] has said. I think we are making a grave mistake in proceeding at this time with the consideration of the proposed legislation. It is a bill of approximately 150 pages of the most complex character.

I had expressed to me this morning the opinion of one of the outstanding lawyers of the Nation that, judged from the constitutional standpoint, a horse and wagon could be driven through this bill in seven different directions. I doubt if there is a Member of the Senate, other than the Chairman of the Committee on Interstate Commerce, who has given the slightest consideration to the impact of the recent Supreme Court decision upon the proposed legislation in its present form.

It seems to me that we perhaps will be making haste if we move more slowly at this time. I myself have gravest doubt

as to the constitutionality of the measure. I think there have been put before us by the Supreme Court "Stop, look, and listen" signs which ought to be heeded by the Senate. It seems to me it would be a most happy move if at least a reasonable time should be given to the Members of the Senate to reconsider the legislation in the light of the recent action of the Supreme Court. I think it is a grave mistake to proceed with its consideration at this time.

Mr. DIETERICH. Mr. President, the nature of the legislation which is about to be brought before us is such that we had better move a little more slowly, and we had better give it a little more consideration than it has received, or we shall find ourselves in the same position in which we found ourselves day before yesterday, with a disturbed industry on our hands and the opinion of the Supreme Court of the United States telling us that we had legislated beyond our constitutional authority.

No emergency exists with reference to this measure. The utilities have been operating under their present set-up for quite a while. We have passed some laws which will correct some evils, but an opportunity has not as yet been afforded for those laws to be tried out to ascertain how far they will go in remedying the evils. In view of the fact that this bill, if passed, means the end of private ownership of the utilities dealt with in the measure, we should be careful and give the matter the consideration that the dignity of this body demands.

This bill really should be recommitted to the committee for further study and investigation in view of the recent opinion of the Supreme Court, because there is no question that the bill contains provisions as obnoxious to the Constitution as provisions in the act on which the Court passed; and certainly time should be afforded to reconsider the measure, compare its provisions, and weigh it in the light of that opinion.

I think the suggestion that the bill should be referred to the Judiciary Committee, after having been reported from the Committee on Interstate Commerce, is a sensible one. There is no use of hurrying through matters of the importance of this one. I think the pending motion should not be agreed to at this time, and that the Senate should have further time to consider the provisions of the bill.

The VICE PRESIDENT. The question is on agreeing to the motion of the Senator from Montana [Mr. WHEELER].

The motion was agreed to; and the Senate proceeded to consider the bill (S. 2796) to provide for the control and elimination of public-utility holding companies operating, or marketing securities, in interstate and foreign commerce and through the mails, to regulate the transmission and sale of electric energy in interstate commerce, to amend the Federal Water Power Act, and for other purposes, which had been reported from the Committee on Interstate Commerce without amendment.

THE ADMINISTRATION'S FARM PROGRAM UP TO DATE

Mr. BARBOUR. Mr. President, by careful consideration of the pending amendments to the Agricultural Adjustment Act, and in fact of the entire farm program of the administration up to date, has led me to the unalterable conviction that, so far and until some sound and sensible changes are made in agricultural legislation, the American people are still being called upon to bear an insufferable burden which, if continued, will lead eventually to near destruction. I say this mindful that some of us are working for certain beneficial laws. And this is especially true in respect to those in the agricultural department of the State government at Trenton who know New Jersey's problems and how to help them. I have worked, and always will work, in hearty cooperation and in full accord with these efficient officials of our State.

The time has come when we must recognize that the State of New Jersey, as a large producer of agricultural products, and with a large consumer population of those products because of its wide industrial interests, has a most vital concern with the present farm program and with proposals to extend still further the senseless theory of scarcity economics upon which the program is based.

As a representative of that State, with its vast specialized agricultural interests, I am proud of my long record of sympathy with every sound measure which would assure a happier and more prosperous livelihood for its farmers and for farmers of other States. I repeat, for emphasis, *every sound measure*. It is for that reason that I am opposed to the present program. Not only is it unsound but there is ample evidence that its effects, within the short period it has been in operation, have been a deterrent to the national recovery which all of us are so hopeful of obtaining as soon as possible. The experience with the program within my own State—and this holds true in many other States—is that the farm program as a whole, instead of helping farmers, is draining thousands of dollars from their pockets annually to be moved through the ramifications of a vicious and expensive bureaucracy and placed in pockets elsewhere.

Like men engaged in the futile task of trying to build a machine which will move perpetually, the originators and proponents of the farm program have been seeking to do by law of man something which cannot be done—to legislate the law of supply and demand.

I would not impugn the sincerity of those in the Department of Agriculture who have sponsored and fostered the agricultural program any more than I would disparage the sincerity of hundreds of unfortunates in our insane asylums who think they are Napoleon Bonaparte. However, of one thing I am certain, and that is that the existing agricultural program has nothing beneficial or helpful to offer to the farmers of my own State or to those of many another State. To the contrary, millions upon millions of farmers and consumers of their products are being assessed many more millions of dollars annually to maintain what?—to maintain a theory which has been aptly described as one in which we are told that if we have less to eat, less to wear, less to ride in, and pay more for it we are better off.

Let me cite the instance of the State of New Jersey under one phase of the farm program—that of the assessment of so-called "processing taxes" to support a system of benefit payments to producers who sign contracts to plow under their fields of cotton, their fields of corn and wheat, or to allow the Federal Government to slaughter their hogs and cattle. Latest statistics of the Department of Agriculture show that from the State of New Jersey the sum of $7,800,455 was exacted in these taxes, while benefit returns to the farmers of the State was the comparatively insignificant sum of $256,623. That money in taxes came from the pockets of the farmers and other consumers of the State not for the support of the Government but for a campaign of destruction so they could have the privilege of paying more for every necessity of life they bought.

Sorry indeed for the millions on relief, stretching a meager allowance to eke out a bare existence, must have been the picture of the Federal Government slaughtering 6,000,000 pigs, pouring sows into rivers, plowing cotton and wheat under the soil, in accordance with a theory of making commodities more scarce and their prices more prohibitive to the poverty stricken; and somewhat disappointed must be every thinking recipient of benefit payments when he awakes to the realization that the price of the remainder of the commodity which he has to sell on the market is less than it would be if he paid no processing tax by the exact amount of the tax. Eminent economists have furnished ample evidence that if the processing tax, say for instance of $2.25 per 100 pounds on hogs, were removed today, the price of hogs to the farmer would immediately jump just about $2.25 per 100 pounds. In other words, the farmer is asked to pay a processing tax, which is then moved through an expensive system of administration in Washington, and to receive the tax back in a so-called "benefit payment", less the cost of administration. Proponents of this program may call that a "benefit payment", but I must confess that I fail to see who is benefited except a horde of swivel-chair clerks in the Department of Agriculture, who want to tell the farmer of my State how to farm, when to farm, what to destroy, and what to sell of what is left.

Turning again to the relatively small amount of money which returned to the State of New Jersey in comparison to

the amount paid in processing taxes, let us look at some of the cold facts of outright harm which the program has otherwise done to our farmers.

NO HELP TO POULTRY RAISER

My State is not an outstanding producer of feed grains, for it has been found better adapted to milk production and vegetable raising, and has become one of the world's greatest poultry and egg centers. I am certain no farmer or poultry raiser in the State considers the farm program beneficial when he receives his monthly feed bill, mounting steadily, month after month, because a farmer elsewhere has been paid by the Federal Government to plow under grains or not to plant as much as he planted the previous year.

One of the most important facts which have been lost sight of by the proponents of this legislation is that the farmers of the country are themselves consumers. Noble, indeed, is any sound program to raise the income of the farmer, for as his income increases so is he able to purchase more manufactured products and factory wheels turn again and industrial workers are able in turn to buy more of the farmer's products. I challenge any and every sponsor of this program, however, to point out to me, if he can, where there is a single iota of economic soundness in the theory that the farmers of New Jersey should be taxed as consumers for the benefit of feed-grain producers in a State probably two or three thousand miles distant.

I challenge for proof of economic soundness the theory that the farmer's wife, when she drives to town Saturday night, must pay more for the family's clothing because a cotton planter of the South is being paid by the Federal Government to plow under his crop, or to sit idle on his front porch and watch weeds choke the stalks of cotton in the fields. Of what help is it to the farmers of my State to have such lands taken out of cultivation of their normal crops and turned to the production of crops competing with those raised in New Jersey or other States to which certain crops are peculiar? By the same token, of what benefit to the whole Nation at large is the policy of taking well-watered and mature lands from the cultivation of productive crops, leaving them idle, and then spending vast sums of money, which will never return to the Treasury, upon irrigation projects to bring into cultivation lands which are little more than desolate wastes?

POTATOES SENT INTO NEW JERSEY

I am still waiting for any defender to come forward to prove to me where the administration's farm program, or, in fact, any other program, has been helpful to the farmers of my State. Just before the elections in Maine some time ago the farmers of New Jersey had a huge surplus of potatoes. Everywhere one would drive along the roads of New Jersey potatoes were piled in the farmyards and in the fields, ready for purchase at any price offered. With their eyes on the Maine elections, the relief agencies of the administration shipped into the already potato-glutted State of New Jersey carloads of Maine potatoes for distribution to the New Jersey needy. I have no doubt whatever that similar shipments were made to other potato-producing States. Those carloads of Maine potatoes doubtless played their part in carrying the Maine elections for the administration, but at the expense of the New Jersey farmer.

There were two instances in which the administration could have been helpful to the farmers of the State, but in which it has been sadly negligent. In the State of New Jersey we have regulation of milk by State control boards. Their operations were a source of pride until milk of inferior quality began to seep in from other States, sometimes from a distance of many hundreds of miles. Time and again the assistance of the A. A. A. was sought by the boards to control this inflow of competitive milk and preserve the State's industry. Has that assistance been forthcoming? In so feeble a way that it has amounted to relatively nothing. Meanwhile, our dairy farmers continue to suffer, with no prospect of relief from the A. A. A.

PEACH BILL VETOED

Then there was the deliberate action of the President last year in vetoing a congressional enactment designed to bring relief to Jersey peach farmers whose crops had been seriously damaged by frost. Introduced by former Senator Kean, of New Jersey, the bill would have afforded the same degree of relief to the Jersey peach growers that other weather-stricken sections were receiving. The President, however, vetoed the bill on the ground that New Jersey farmers could obtain relief from other sources. That relief was not available, however, and through the administration's action hundreds of peach growers were left in a destitute condition—and New Jersey is the third or fourth largest peach State in the Union.

By raising prices to them as consumers, the farmers of New Jersey will pay more for the foods which they do not produce and the clothing which they buy; they have been denied the markets they already had; and under an unconstitutional National Recovery Act they have been forced for 2 years to pay more for every farm implement they bought. A splendid record of farm relief, indeed.

Under the licensing powers which these amendments would give to the Secretary of Agriculture, every New Jersey farmer who packed his vegetables in a box or bag, or placed his eggs in a crate, or drove them to market, would be considered a handler and could be subject to a license to do business by a bureau in Washington.

Under the quota provisions of the amendments, a clerk in the A. A. A. could decide, for instance, that New Jersey had raised too much lettuce, and that some other State was entitled to more of the metropolitan market for lettuce. He would notify Farmer Brown or Jones, "You have produced too much lettuce. You may market only 50 percent of your crop this year."

The result would be that the remaining half of the crop would rot in the fields.

Under these amendments, every farmer who has two or three cows, or more, and who derives a part of his income from a small milk route would be subject to a Federal license and could be told by another clerk in Washington just how much milk he could produce, where he could sell it, and how much he could sell it for.

WOULD LICENSE EVERY FARMER

The same is true of every farmer with a roadside stand or market stall. He could be controlled, regimented, and restrained in every sale of a dozen eggs, a box of peaches, or a bag of potatoes by a bureau in Washington. In the same way, through the proposed system of licenses, every retail store from which the farmer bought shoes or clothing could be told just how much it could sell him and at what price.

It has been argued that the amendments provide that no farmer can be licensed in his capacity as a producer. The bill does provide, however, for the licensing of those who buy from the farmer, permitting a strict limitation of how much they may buy from him, when they may buy, and how much they may pay.

It does not appear to me to require any great amount of intelligence to see that a license on the buyer of farm products is nothing more or less than a license on the farmer himself.

While it is not in these amendments, the Secretary of Agriculture and Administrator Davis, of the A. A. A., have given full approval to legislation which would affect still more drastically the farmers of not only my State but many others. Under this plan, which at this session reached the point of becoming amendments in a committee print of the bill, a New Jersey farmer who owned one or more cows and who sold milk would have every ounce of that milk taxed and the money then turned over by the Federal Government to a grower of feed grains in some distant State in return for his plowing under more acres of corn, wheat, and other feeds. The New Jersey farmer would get nothing in return, except the privilege of paying another tax for the benefit of someone else.

I can see not one single way in which this legislation would help the farmers or consumers of my State. I can see every way in which it would harm them and be detrimental to their every interest.

It is nothing more than another attempt at minority lawmaking. It has been estimated that the population concerned by this legislation is about 15 percent of the total. None of that 15 percent is in my State, nor in many other States.

NEW JERSEY FARMERS NEED HELP

I cannot vote against the interests of the people of the State of New Jersey or 85 percent of the population of the Nation in favor of the interests of something like 15 percent of our population. I will glady vote for any measure that will help the New Jersey farmers, for they need it. And it must be remembered that New Jersey is not simply a large industrial State, it is also a large agricultural State. Moreover, as I pointed out at the outset, we have a very efficient agricultural department connected with our State government at Trenton, and it is my wish always to do all I possibly can to assist them to help our farmers. Certainly, as a friend of the New Jersey farmers, I am not going to do anything here in Washington that I feel will not help them or that I feel will hinder or hurt them.

The time has come when the National Government at Washington must recognize, as the State government and those connected with it recognize, that the agricultural interests, the farmers of New Jersey, must get the help and consideration to which they are justly entitled.

THANK GOD FOR THE UNITED STATES SUPREME COURT

Mr. SCHALL. Mr. President, May 27, 1935, henceforth will stand out in American history as the new national thanksgiving day, when the people of the United States joined in the prayer, "Thank God for the United States Supreme Court—our Constitution still lives."

No longer with impunity can the legislative power of Congress be delegated to the Executive to create a centralized dictatorship.

No longer with impunity can the alphabetical bureaus exercise both legislative and judicial powers, impose fines and imprisonment, levy and assess taxes by usurpation of the powers granted Congress in article I of the Constitution.

No longer can the Executive, under the approval of the courts of the United States, delegate to and confer upon combinations in restraint of trade the legislative functions of Congress.

No longer can a centralized autocracy invade the powers of the 48 sovereign States and dominate their intrastate commerce.

No longer shall Executive edicts usurp the law of the land and take the place of the Constitution and Bill of Rights.

No longer shall the industries of the United States be cracked down by the fascistic codes of the N. R. A. and the workers be denied the rights of liberty and pursuit of happiness or the homes robbed by legalized monopoly.

In short, the Blue Eagle host which has so long blackened our sky with its talons and pinions has at length passed—to use the term of General Johnson—"from egg to earth" just in time for a lawful and too-long-deferred burial.

If this new-deal cloud which for 2 long years has lowered above our coast is not "in the deep bosom of the ocean buried", as described by William Shakespeare, it at least is on the way, as uncertainly forecast by Franklin Roosevelt in his book.

As frequently stated in the Senate Chamber, our Commander in Chief, when he wrote his book "On the Way", was in the same case as Christopher Columbus. He did not know where he was going when on the way, did not know where he was when he landed, and did not know where he had been when he got back. But he is wiser now. After 3 hours' perusal of the unanimous decision of the United States Supreme Court, he knows now where he is headed; he knows the island to which his bark is anchored; and his great problem is how to get off and get back with his band of Indians. If Spain does not welcome him, he may find a haven in Italy or Russia, where there are no legislative bodies, no Constitution, no Bill of Rights, no freedom of the press, no Supreme Court, and no law of the land except the edicts of a Mussolini or a Soviet General Council.

It has been often said that there is a ruling Providence over the affairs of men, a "divinity that shapes our ends", and that over all we do here there is a certain divine harmony. And so it is in the life and death of that strange bird, the Blue Eagle.

By some strange freak of divine harmony, the counsel chosen by the administration to handle the life-and-death struggles of this bird of prey in the Court—the Attorney General and Special Counsel Richberg—chose as the ideal case to be laid before the Supreme Court the particular case so highly advertised as the "sick chicken" case.

They discarded the lumber case as too precarious. They had lost the oil case and a coal case, and other cases had fallen from egg to earth while on the way through lower courts. But the "sick chicken" case was ideal, said Special Counsel Richberg to the press, as he laid it before the Court. Said he at the time:

On fundamentals this case should provide for a complete and final decision on the constitutionality of the N. I. R. A.

Said Richberg again:

I never knew of a case without some technicalities, but this one seems to be unusually free from them. It is an admirable case.

First, in the lower courts of New York he had secured 10 counts supported by the court on an indictment for violation of the straight-killing clause in the chicken code of the new Soviet deal. Two counts nailed the defendants because of an egg-bound hen. Other counts were allowed because the chicken was selected from the wrong coop, or half coop, which violated the law because it was not an average coop. In all, Richberg had his victims convicted on 17 counts—that is, New York counts, not Russian counts. Moreover, there was not the proper amount of collective bargaining, and there was a bookkeeper who was counting chickens 50 hours a week, which was in violation of the "Code Hugh S. Johnson", promulgated by Franklin D. Roosevelt on April 13, 1934, to avert a national emergency and insure national recovery.

So the three Schechter boys, of Brooklyn, N. Y.—Alexander, Martin, and Aaron—who sold poultry to the Jewish trade, were thrown into jail because they had sold that egg-bound chicken, chosen from the wrong half coop, coop, or coops, as the law proclaimed by the President had provided to avert a grave national crisis.

It certainly looked like an ideal case to test the constitutionality of the egg-bound Blue Eagle on the way from egg to earth. It offered, as Richberg said, "an admirable case" for a "complete and final decision on the constitutionality of N. I. R. A." But it seems that the United States Supreme Court, all nine justices unanimously concurring, agree with the diagnosis of Hugh Johnson, that Richberg had ants in his pants all the time, and that not only the egg in this sick chicken but all the 731 eggs of the Blue-Eagle codes are both superannuated and rotten in the light of the laws of God and man.

There is only one point which Richberg got right, and that is the logical analogy between the Blue Eagle and an egg-bound sick chicken.

There is only one section of the Poultry Code which the Supreme Court approves, and that is the straight-killing provision as applied to the Blue Eagle and all its unconstitutional species.

Richberg went over the 731 codes and 300 N. I. R. A. licenses, as Solomon might review his 700 wives and 300 concubines, to find one which would afford a complete and final decision. He found it—the "sick chicken" code was his Queen of Sheba. It will be recalled that Solomon, after the departure of the Queen of Sheba, sat down and wrote that pitiful wail:

Vanity of vanities; all is vanity.

He was all in. Never could he rise to the occasion again. And that is the case with Richberg. He sings his swan song as his eye follows the "sick chicken" caravan across the desert, under the escort of 731 buzzards, while nothing but the ants remain.

One of the high lights of this decision is that it directly affects not only the N. R. A. but its companion bird, the A. A. A. The poultry code, it seems, was drafted under the auspices of the A. A. A. It is one of those codes which concern agriculture rather than manufactures. It is a joint N. R. A.-A. A. A. code. The A. A. A., under the poultry code, has received an unconstitutional delegation of legislative and judicial powers from the President, who in turn has received an unconstitutional delegation of legislative power from Congress.

The decision of the Supreme Court, reiterating the repeated decisions of the Court since the day of John Marshall—that delegation of the legislative power of Congress is a violation of article I of the Constitution—hits the A. A. A. with greater force in its logical application even than the N. R. A.

The processing taxes of the A. A. A. are nothing less than the delegation of the tax power of Congress to an executive bureau.

The plowing under of the cotton crop and the killing of the 6,000,000 pigs, not only constitute an unconstitutional delegation of the commerce power of Congress, and an unconstitutional delegation of legislative power from the President to the A. A. A., but likewise an unconstitutional invasion by the Federal Government into the rights of the States, and a direct violation both of the fifth amendment and of section 4 of article V—guaranteeing to every State in this Union a republican form of government and protection from invasion.

The dictatorial powers delegated to and conferred upon the A. A. A. by the President, as well as the powers assumed to have been delegated by Congress to the President under the Agricultural Adjustment Administration Act, are on all fours with the powers assumed to have been granted under the National Industrial Recovery Act, except in this—that the A. A. A. powers are more drastic and directly destructive. The A. A. A. embraces and adds to the Facistic powers of the N. R. A. the destructive powers of the Soviet. Both are unconstitutional delegations of legislative powers.

Moreover, the death of the N. R. A. carries with it the death of many of the financial resources of the A. A. A. In short, the N. R. A. and the A. A. A. are Siamese twins. One deals with agriculture and the other with general trade and industry. They are counterparts, one being the excuse for the other. They join in making codes. They join in financial resources. They nurse from the same bottle. They sit in the same crib. They have the same head nurse and doctors. They are members of the same family and have the same parents. The only difference is in their first names—one being A. A. A. and the other N. R. A.—and both alike of unconstitutional ancestry without hope of posterity.

Not only does the Supreme Court decision destroy the foundation of both the N. R. A. and the A. A. A., but it destroys as many as 16 alphabetical bureaus deriving their authority from N. R. A. provisions. The Washington Evening Star of May 27 lists these 16 bureaus created under the supposed grants of the N. R. A. I ask that the article appearing in the Washington Evening Star of Monday, May 27, 1935, headed "Verdict Menaces Status of N. E. C." be read.

The PRESIDING OFFICER. Without objection, it is so ordered.

The legislative clerk read as follows:

[From the Washington Star of May 27, 1935]

VERDICT MENACES STATUS OF N. E. C.—CLEARING HOUSE FOR RELIEF FUND AND OTHER AGENCIES THREATENED

The status of the National Emergency Council, clearing house for the $4,880,000,000 work-relief program, became problematical this afternoon in view of the Supreme Court's decision holding N. R. A. invalid.

The council was set up by the President under authority given him by the Industrial Recovery Act in November 1933, and its authority was broadened by Executive orders of June 30, 1934, and September 27, 1934.

The decision immediately caused apprehension among the 4,000 employees of the Recovery Administration itself, as well as those groups springing from it, a rumor going around that Comptroller General McCarl had held all salaries would be cut off at noon today.

DENIED AT N. R. A.

This was immediately denied by Bradish Carroll, Jr., administrative assistant at the N. R. A., who emphasized the organization's budget had been approved until June 16—expiration date of the Recovery Act—and that payment would be made accordingly.

The rumor at the N. R. A., it was thought possible, was traceable to a decision by McCarl, made public today, in which he held that no payments to the employees of the Railroad Retirement Board could be made for time subsequent to the date the Retirement Act was declared invalid by the Supreme Court.

There apparently is a difference in the situation of the two organizations, it was pointed out, for in the case of the Retirement Board the Court held that there never was a legal reason for its existence, while in the case of the N. R. A. the Court decision seemed only to destroy one function, and not the entire set-up.

MANY FACE ABOLITION

The list of agencies set up by Executive order, authority granted the Chief Executive in the Recovery Act is long. The organizations, the future existence and activity of which are endangered, include:

National Power Policy Committee, headed by Secretary of the Interior Ickes.

Commodity Credit Corporation, which is dependent in part on the N. R. A. and in part on farm-credit legislation.

The Electric Farm and Home Authority, usually thought to be a T. V. A. subsidiary, but in reality a part of N. R. A.

Office of Special Adviser to the President on Foreign Trade, headed by George N. Peek, who has violently disagreed with Secretary of State Hull on the administration foreign-trade policies.

Central Statistical Board.

Public Works Administration, authorized by Recovery Act itself.

Housing Division and Public Works Emergency Housing Corporation.

Division of Subsistence Homesteads and Federal Subsistence Homestead Corporation.

National Resources Board, created by Executive order June 30, 1934, to study and report on planned development of Nation's resources.

Committee on Economic Security, advisory board on social-security legislation set up by Presidential Executive order.

The Federal Alcohol Control Administration, code-making authority, is probably wiped out by the decision.

National Labor Relations Board, which depends in part on the Recovery Act.

Textile Labor Relations Board.

Textile Work Assignment Boards.

National Steel Labor Relations Board.

Mr. SCHALL. One of the most cheering results of this decision is that all of the six Delaware corporations incorporated in the period between October 1933 and January 1934 by 4 members of the Cabinet and 8 bureau chiefs are founded upon the perpetual existence of the N. R. A. They specify the N. R. A. as their assumed legislative foundation.

They start with taking over the functions of the N. R. A. and expanding N. R. A. powers to Soviet proportions, and finally reach the article which reads:

This Corporation shall have perpetual existence.

The death of the N. R. A. through the Supreme Court decision on the straight killing of the sick chicken destroys the foundation of the Delaware corporations. They also are dead as a dodo. Their dodo is dead, with nine Justices of the Supreme Court sitting astride the carcass under a halo of 731 expiring buzzards.

Moreover, the Supreme Court decision overthrows the economic dictatorship established by this administration in the Virgin Islands. If one reads again the charter of dictatorship granted by this administration to the Pearson regime—the Soviet dynasty fastened upon those islands at the time of the incorporation of the Delaware corporations—one will be surprised to find that the Virgin Islands charter is in many respects a duplication of the Delaware charters.

Both the Virgin Islands charter and the Delaware charters carry the article:

This Corporation shall have perpetual existence.

Moreover, both the Virgin Islands and the Delaware charters attempt to make perpetual the main provisions of the

N. R. A. expanded to the *n*th degree by the injection of Soviet powers over industry. Both are unconstitutional delegations of legislative power, which the President has attempted to delegate without constitutional authority. Thank God that the Supreme Court has blocked this attempt to convert the United States of America into another Union of Soviet Socialist Republics!

Mr. President, the duty of the hour seems to be to write the epitaph and attend the obsequies. Although burial day for the N. R. A. is set for June 16, why not give on Memorial Day, which is now at hand, the obituaries of both the N. R. A. and A. A. A., the Siamese twins mothered by the new deal, with the doctors of the "brain trust" as the fathers apparent?

Let us by a resolution read over the graves pronounce in solemn unanimity—as unanimous as the 9-to-0 decision of the Court:

Hic jacet Nira and spouse A. A. A. and the 16 children thereof.

Then in the potter's field we can throw the six Delaware corporations and the Virgin Islands dictatorship under one slab bearing the word "Dodo", and let Richberg's ants do the rest.

We can sing with the American people our new "Te Deum":

Thank God for the United States Supreme Court!

Mr. President, I ask unanimous consent to have read an editorial from the Washington Herald of this morning entitled "Thank God for the Supreme Court."

The PRESIDING OFFICER. Without objection, it is so ordered.

The legislative clerk read as follows:

[From the Washington Herald, May 29, 1935]

THANK GOD FOR THE SUPREME COURT

The Supreme Court of the United States has again upheld the Constitution and Americanism.

By a unanimous decision, the National Recovery Act has been declared unconstitutional.

This decision will be hailed with gratitude throughout the country.

It marks the emergence of sanity—from the welter of nonsense, confusion, crazy bill-drafting, and adolescent experimenting which make up so large a part of the new deal.

It spells the knell of as greedy and insolent a bureaucracy as ever attempted to spread itself over a country dedicated to freedom and a people preeminent for their sturdy virtues and self-reliant character.

Let us hope that it spells the end also of the pestilent innovator and empty-headed theorist in government.

There is a way out of the depression; there is an avenue to recovery; there is an open return to happiness and prosperity—but the road is the way of common sense, of respect for the fruits of work and enterprise, of respect for individual rights.

The way is the American way—vindicated over and over again throughout our history.

It is the way that has made us a great and powerful Nation; that has made the conditions of life among our people better than with any other people in the world.

It is the way of respect for our Constitution, the ark of our liberties, the foundation of our greatness, the source of our security, the promise of our future.

Thank God for the Supreme Court of the United States!

The shifting gusts of short-lived and fleeting opinion cannot sway it. The froth of the strutting little reformers of the day, the shallow-pated innovators of the moment, the litter of a so-called "brain trust", are powerless to confuse, much less sway, American judges.

Salutary, timely, indeed, was this great decision.

It reminds the American people that the foundations of their life are deep-embedded in justice and freedom; and that reason, self-command, and sobriety both of thought and conduct are still American characteristics.

VETO FOR THOSE WHO SERVE—BILLIONS FOR DEBT AND PORK

Mr. SCHALL. Mr. President, the basic ground for the veto message of May 23 from the White House is this: That those who rendered the Nation their public service and supreme sacrifice on the field of battle—

Should be accorded no treatment different from that accorded to other citizens who did not wear a uniform during the World War.

This means that public service in battle for defense of the Nation is entitled to no treatment different from that accorded to private service in the fields of personal profit. Patriot and profiteer look alike to the White House.

It means that those who give are entitled to no treatment different from that accorded to those who take. Defender and milker of Government are all the same to him who read this veto.

It means that those who serve deserve a kick from a heartless and ungrateful taskmaster, while the Astors and Baruchs bask in the smiles of Executive favor.

In the brief period of 2 years and 3 months since the inauguration of Franklin D. Roosevelt—March 4, 1933—as shown by the Treasury Daily Statement recently issued—he has called upon Congress for a total of $17,671,000,000 for his bold experiments in planned emergency. Yet he vetoes an act of Congress to meet the officially acknowledged debt of the Nation for service long ago rendered in the amount of one-ninth of the sums he has squandered, or proposes to squander, on his bold experiments in producing chaos. Seventeen billions for debt and pork, a veto for the defenders.

In proclaiming that those who served the Nation in war are entitled to "no treatment different from that accorded to other citizens", who served their own interests and reaped the profits of war, Roosevelt in effect proclaims that the veterans of the World War are not even entitled to the adjusted-service certificates allotted to them in 1924.

If service for Uncle Sam is entitled to no reward greater than service for self, the veterans are not entitled to those certificates.

In the light of his words and deeds since March 1933, his motto and political policy may be expressed thus:

Billions for bold experiments in planned emergency and a White House veto for those who served the Nation to save democracy.

Even the lump sum of $5,000,000,000 subject to his own allocation in his emergency of 1936 is nearly double the amount, voted by Congress and vetoed by the President, to redeem the soldier debt outstanding and bearing 4-percent interest per annum. Five billion dollars for the Roosevelt campaign of 1936 against $2,000,000,000 for 3,500,000 veterans in need.

In 1933 and 1934 he expended $6,000,000,000 on planned emergency. In the first 9 months of the present fiscal year he has expended $3,000,000,000 more on his bold experiments and produced a deficit of $3,000,000,000.

For 1936 and 1937 he has secured allocation of $8,500,000,000 more, or a grand emergency total of $17,671,000,000, for debt and pork.

And yet an act of Congress to redeem the veteran debt of only $2,200,000,000 he vetoes to preserve the national credit.

Here is his financial record up to the date of his veto message of May 23, the record of the greatest pork inflation of history:

First. $17,671,000,000 for 2 years and 3 months of planned emergency, debt, doles, and deficits, resulting in 22,000,000 people carried as public charges and 11,500,000 unemployed.

Second. Veto of an act that would reduce the debt by $2,200,000,000 and save $1,000,000,000 in taxes to pay the interest coupons while at the same time affording direct relief to 3,500,000 veterans and dependents, reducing the number of public charges, aiding employment, and stimulating all industries and trade in every hamlet in the land.

Billions for the 57 alphabetical bureaus which produce industrial chaos. Veto for the veterans of the 48 States who fought to preserve the Constitution.

Consider the mind of a President who can demand $5,000,000,000 in one lump for his own emergency in 1936, and denounce to the soldier $1 to $1.25 a day. Perhaps his idea of adequate pay is shown by his recent allocation for unskilled labor at about 70 cents a day, or $19 a month. Judging from his unskilled labor allocation had the bonus been set at 75 cents a day it might have received his approval.

Billions for debt, doles, deficits, and dictatorship. Veto for those who fight to save democracy.

Billions for the A. A. A. and the N. R. A., the destruction of crops, the waste of food, the processing taxes, and the depression of industry. Veto for the direct relief prayed for in every hamlet of this Republic.

Billions for the political plunder-bund that follow the sign of the Blue Eagle. Veto for those who fight for country under the flag of the Stars and Stripes.

Billions for the Blue Eagle of monopoly; veto for the defenders of the Stars and Stripes.

All through this veto message we hear the word "benefits", as though the meager justice and beggarly pay accorded the veteran who sacrificed to serve his country were a gratuity handed down to him by his feudal patron lord. But $1 to $1.25 a day for a soldier is too great a benefit—against only $1,000,000 a year for Vincent Astor.

This act of Congress, as charged by Roosevelt—

Violates the entire principle of veterans' benefits.

Again he says:

Many benefits have been provided for veterans

Again:

In addition to these direct benefits.

Still again:

The handing out of a few dollars will not benefit him.

Finally he arrives at the conclusion that redemption today of a debt outstanding since the armistice of 1918—

Is a new straight gratuity or bounty to the amount of $1,600,000,000.

In other words, there is no obligation on the part of a Nation to its defenders. The perils of war are the veterans' lookout, and not the Nation's concern or the responsibility of Congress, even though the Government, employing the mailed fist of monarchy, seized the boy and forced him into service under a draft law insisted upon by a former Democratic administration commanded by the war lords of Europe.

All that the doughboy received beyond his petty $1 a day in war service, according to this veto message read to us, was benefits handed down by a benevolent autocrat, while the redemption of the debt acknowledged by Congress is a new straight gratuity.

All obligations named in the Roosevelt message are those of the veterans to the Government. The adjusted-service certificates forced upon the veterans in delayed settlement of service are described in the veto message as an obligation for the veteran to wait till 1945. Europe had no obligations deserving a White House message, when 17 countries defaulted for $12,000,000,000. Only the veterans.

The implication is plain. What the citizen receives for patriotic service are benefits bestowed upon him by a beneficent sovereign. Obligations are those of the subject to his ruler. Under the new deal, as interpreted by Roosevelt, there are no obligations and debts which the sovereign owes the subject. All obligations are due from the subject to the sovereign. All benefits are bestowed by the sovereign upon the subject.

As Prof. Raymond Moley expresses it, "We shall never go back to the ideas of 1776."

As Dr. Rexford Guy Tugwell tells us:

I have had a chance to see the truth of the saying that ours is a government of men. The fiction that it is a government of laws would, I think, never have obtained its great prestige if the right men had been called to govern. * * * Everything depends on men.

Following the new-deal doctrine of Moley and Tugwell, Franklin D. Roosevelt and his bureaucrats represent government by men. They are the men who govern, and the rest are subjects.

Government by men, in lieu of the fiction of government of laws, was achieved by delegation of the law-making powers to the Executive. The Executive and his bureaus draft the bills, direct the lobby, deliver orders to congressional committees and congressional leaders, and impose a veto upon acts of Congress not authorized by the Executive.

We are never to go back to the ideas of 1776, when such men as Washington and Jefferson, Madison and John Marshall stood upon the American creed that the just powers of government are derived from the consent of the governed.

Under the constitutional idea of government by laws made by Congress, this Congres has at length recognized the obligation of the Nation to its veterans and has voted to redeem that debt.

Under the new deal of Roosevelt and his "brain trust" there is no obligation of the Government to the veterans, and whatever the veterans receive are benefits from those who govern.

The veteran who faced the enemy from the trenches and barbed-wire entanglements receives even shabbier treatment than that accorded Vincent Astor, who reaped a net income of over a million a year for 5 successive years, or Barney Baruch, or Baruch's assistant, General Johnson, who did their profitable fighting from a distance of 4,000 miles west of the battle line and 40 miles west of the Maryland bank of the Atlantic Ocean.

The veteran debt redemption voted by Congress in the amount of $2,200,000 rests upon the ideas of 1776—the provision of the Constitution which gives the legislative power to Congress, and the authority to recognize the service of the Nation's defenders and redeem the veteran debt by issue of currency.

The $17,671,000,000 represent government by men, the Executive and his bureaus, which exercise the right to usurp the legislative powers of Congress and distribute benefits subject to the allocation of the Executive.

This veto message proposes to allocate no benefits to the veteran and accord him no different treatment, except the obligation to wait till 1945, from that accorded Astor, Baruch, and Johnson.

Under the coercion of the President we have upheld that idea of injustice to the defenders of the Constitution.

We have upheld the new-deal doctrine which delegates the legislative powers of Congress to the Executive.

Having voted nearly $18,000,000,000 to be allocated by the Executive to his experiments in so-called "planned emergency", the results of which have been well-planned chaos and which planned chaos is furnishing the definite stepping stones to the realization of the President's grandiose ideas of subverting this Republic into a dictatorship, we have further helped the chaotic conditions upon which tyranny feeds by refusing to reduce the veteran debt of $2,200,000,000, and thereby discarded the only legislation that has been before this Congress that would tend to eliminate the chaotic conditions of the country so deliberately planned and brought about by this administration. He again wins; the Republic loses. How long, O Lord, how long! is answered in the veto by the Supreme Court of the N. I. R. A. graft. The National Ruin Act or the National Racketeer's Association has been, thank God, declared by the Supreme Court to be unconstitutional, and hope again lives for the Republic, though for the last 2 years "truth has been upon the scaffold, wrong upon the throne." On our way to Moscow and Siberia by way of the Delaware corporations has been checked. The unholy, secret, plotting, foreign forces of revolution to overthrow representative government have been routed. The United States and its fundamental law, the Constitution, still live because of a brave, intelligent, patriotic Supreme Court.

FEDERAL INVASION OF THE STATES

Mr. President, the State of Iowa, from which came our new-deal commissar of A. A. A. crop destruction, has a chapter in its code imposing a fine up to $1,000 and imprisonment up to 1 year for waste of food products to increase the price.

Commissar Wallace, formerly of Iowa, has invoked a Federal dictatorship backed by hundreds of millions of Federal subsidy not only to break down this law of Iowa but to compel the farmers of Iowa to choose between violating a Federal law and going to a Federal prison or violating a State law and going to State prison. And the jailing of the farmers has begun.

Chapter 601 of the Iowa code, entitled "Destruction of Food Products", reads:

SEC. 13249. Waste of food products to increase price: It shall be unlawful for any person, firm, or corporation to willfully destroy or

negligently suffer to go to waste, with intent to increase the price thereof, any food products of any nature or description without the authority or consent of the local board of health or local health officer of the city, town, or township in which the food products are located.

SEC. 13250. Punishment: Any person, firm, or corporation violating any of the provisions of the preceding section shall be guilty of a misdemeanor, and upon conviction shall pay a sum of not more than $1,000, or be imprisoned for any length of time not exceeding 1 year, or be punished by both such fine and imprisonment.

Two Iowa farmers are now in the penitentiary and a third farmer has given up his rights as a citizen of Iowa to appeal to an Iowa court, and now is hounded both by Wallace and the State, because 6 brood sows gave birth to 45 little pigs without the farmer's permission and in violation of the soviet code of Commissar Wallace of the A. A. A.

Farmer Saucke, owner of the six lawless and guilty sows, lives in Calhoun County, just west of Farnhamsville. When he saw those 45 thrifty pigs he went to the county committee to explain his predicament. The Des Moines office of the A. A. A. told him that it would cost him then $313 taken off his corn-hog check. The farmer appealed to Wallace and waited. While Wallace pondered the pigs grew. In 90 days those pigs had grown to 60 pounds a piece, nice roasting size. Wallace was as reasonable as Secretary General Stalin. Those six sows could not defy him. The Federal edict would stand, and the farmer now loses $700 because of the criminal act of six sows which pigged without Federal license and in defiance of Government edict.

Five photographs have been mailed to me by members of the National Farmers Holiday Association—President Milo Reno, of Des Moines, Iowa; Vice President John H. Bosch, of Atwater, Minn; Secretary-Treasurer John Chalmers, of Des Moines; and L. M. Peet, the sender of the photographs—picturing the tragedy of those 45 thrifty pigs. These photographs picture the carcasses of the dead pigs heaped up outside the barn, the pig killers at work, the poor sows nosing their dead offspring, and pigs being tossed into a wagon to be hauled to a fertilizer dump at an age when they would be ideal eating for the unemployed.

It seems that Farmer Saucke offered to donate the pigs to local relief or Federal relief, but Wallace would have none of that. The law of the State of Iowa might be violated, but the Code Wallace never. The Federal edicts of Wallace were like the laws of the Medes and Persians or the Code Napoleon Bonaparte, or the commands of the Soviet General Council—though the laws of the State of Iowa might fall down and State boundaries with them.

It might be well for the Senate, through its Committee on Agriculture and Forestry, or a subcommittee thereof, to investigate the extent of this Federal invasion of the States by the A. A. A. before passing upon the A. A. A. extension bill. An investigation will doubtless show that the A. A. A. and the N. R. A.—in violation of the constitutional provision guaranteeing every State a republican form of government—have invaded the boundaries, violated the constitutional rights, and broken down the State police and commerce laws of every State in the Union. Under the A. A. A. and the N. R. A. the rights of the States have become an empty name as meaningless as the rights of the provinces of Russia, Germany, and Italy under the new deals over there.

I note that the Agricultural Code, XVI–2 of the General Laws of California, has a provision slightly differing from the Iowa code. Division VI, Markets, chapter 2, provides:

Destruction of foodstuffs in restraint of trade, 1161–1162

SEC. 1161. Destruction unlawful: It is unlawful to destroy in restraint of trade any food, animal, or other stuffs, products or articles which are customary food, or which are proper for food, for human beings, and are in fit sanitary condition to be used as such.

The penalty provision grants the right to destroy by consignees of food products only by written permit of the commissioner, county health officer, or State board of health.

The laws of the various States on the subject of "restraint of trade" commonly follow the example of the new Indiana code and declare punishable any combination—

To limit or reduce the production or increase or reduce the price of merchandise on any commodity, natural or artificial, or to prevent competition.

Minnesota Revised Laws, under the title "Monopolization of Food Products Declared a Criminal Conspiracy", declares:

Any combination of persons, either as individuals or as members and officials, to monopolize the markets for food products in this State or to interfere with or restrict the freedom of such markets, is hereby declared to be a criminal conspiracy.

The courts would undoubtedly construe destruction of food products to increase the price a penal offense within the meaning of the code, as expressly defined by the codes of Iowa, California, and Indiana.

Beyond reasonable doubt the monopoly acts of every State in the Union are violated by the dictatorial edicts of the N. R. A. and A. A. A., which we are now asked to extend.

Indeed, regardless of all statutory law, State or Federal, the A. A. A. and N. R. A. violate the common law against monopoly and restraint of trade, as declared both by the courts of the United States for 140 years and by the common law of England for a century before the United States Constitution, and is certainly a violation of the law of God. Even the suspension of the antitrust laws of the United States does not suspend the common law of the land established for the protection of trade and industry for a century before the Sherman Act.

We have only to read the papers of Thomas Jefferson and the decisions of John Marshall to know that the common law against monopoly and restraint of trade was a part of the basic law of the land, and confirmed by the Constitution and embodied as a part thereof, just as the Declaration of Independence with its fundamental definition—that the "just powers of government are derived from consent of the governed."

In short, there is no monopoly grant imbedded in the foundation of this Republic; and no franchise to destroy food and thereby restrain trade, fix prices, and foster monopoly in the first necessity of human life.

Shall we, the Senate of the United States, permit a dictatorial system, whether Fascist or Soviet, and lend our voices and votes to extend an A. A. A. or an N. R. A. cade system to effect that unconstitutional end? Shall we be "yes" men to Federal invasion of our States and betray into the toils of this Federal machine the home folks who elected us?

I note in the Minneapolis Journal of May 16 that the livestock men of the Chicago stockyards—whose records show 5,105,000 valuable pigs weighing 25 to 80 pounds were dumped into fertilizer tanks in the 6 weeks between August 23 and October 7, 1933, by Federal orders—are thrown into consternation by Roosevelt's recent statement to the gathering of A. A. A. pilgrims gathered on the White House lawn last week that the Government had not wastefully destroyed food in any form.

The livestock men who handled these pigs by Government orders know that the 5,000,000 pigs were perfectly edible, being at the ideal stage both for roast pig and for little-pig sausage, notwithstanding the Wallace edict that an 80-pound pig is inedible or the Roosevelt declaration to his A. A. A. pilgrims that the Government had not wastefully destroyed food in any form.

The veracity of these political statements appear to be on a par with those of Government lobbyists and witnesses for the A. A. A. and N. R. A. bills throughout this 2-year period of destruction of farm and factory production under the two twins of industrial chaos—the A. A. A. and the N. R. A.—since their enactment under false pretenses in June 1933.

Wallace and Tugwell, Johnson and Richberg, the four chief witnesses for A. A. A. and N. R. A. extension, are witnesses whose veracity should be weighed well by the jury of Congress now in session. The merits of the two bills, drafted by these bureau heads and advocated by them, may be properly weighed by the statements of the star witnesses that a roasting pig is inedible and that destruction of 5,000,000 of them in 6 weeks, along with thousands of cattle and sheep, was not a wasteful destruction of food in any form. The corn and wheat reduction goes with the pigs and cattle and sheep—the cereals with the meat.

In short, there can be no food waste, because the king can do no wrong. The food just faded away, the corn-

hog checks came, the pigs just died, and the witnesses who threw the food into fertilizer tanks by Government order are liars, like Congress, and are guilty of the new-deal crime of lese majeste.

Furthermore, the press which publishes the statements of the Government pig killers are even more guilty than the witnesses. Those newspaper men plainly intimate that the king can do wrong, at least in telling a pig story.

With the consent of the Senate, Mr. President, I desire to append to my remarks without reading two articles. The first is a short dispatch from the Minneapolis Journal of May 16, showing the records of the Chicago stockyards with regard to pigs killed by Government orders in 6 weeks of the early fall of 1933, and the reaction of the livestock men to the President's speech to the A. A. A. dirt farmers.

The second article is the text of the radio address delivered by Milo Reno, president of the National Farmers Holiday Association, in Des Moines, Iowa, reviewing the Iowa code provisions relating to wasteful food destruction to increase prices, and narrating the recent history of farm arrests pursuant to that law and the Code Wallace, namely, the A. A. A., which we are asked to extend in a bill now pending.

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

[From the Minneapolis Journal of May 16, 1935]

CLAIM OF NO A. A. A. WASTE IS CHALLENGED—CHICAGO LIVESTOCK MEN REPORT 5,105,067 YOUNG PIGS DESTROYED

CHICAGO, May 16.—Chicago's livestock industry and producers and processors throughout the Middle West were thrown into consternation by President Roosevelt's assertion to the farmers gathering in Washington Tuesday that the Government has not wastefully destroyed food in any form.

At the stockyards the President's speech was the big topic of conversation. Livestock men, recalling the killing and destruction of millions of little pigs and sows in the fall of 1933 and last year's big cattle and sheep killing and destruction by the Agricultural Adjustment Administration, were at a loss to understand the statement that no food had been wasted.

They recalled seeing thousands of pigs daily—valuable little pigs weighing from 25 to 80 pounds—going into the packing plants, not for food but to be knocked on the head, stuck, and thrown into the tanks to be cooked with steam a few hours and then dumped out as tankage and fertilizer.

Official records produced at the stockyards showed that is what happened to exactly 5,105,067 young pigs over the entire country in the short period from August 23 to October 7.

Although these young pigs were classed in the official reports of the A. A. A. as "inedible", they were mostly from herds of good quality and a large part of them, according to packing experts, were excellent for roasting even then.

RADIO ADDRESS BY MILO RENO, FROM DES MOINES, IOWA, MAY 12, 1935

In the name of all that is decent, honest, and righteous, I appeal to the workaday people of this Republic to awaken from their day dreaming, get their heads out of the clouds, and commence intelligently to consider the situation as it is.

For 15 years our people have been cajoled by the sophistries of designing politicians, induced to believe they could borrow themselves out of debt, while the value of their securities was continually depreciating and the value of their production insufficient to meet their taxes and obligations, until now a debt so colossal has been created that it will never be liquidated except through some form of repudiation.

We have seen the foundation upon which this Republic rests, the Constitution of the United States, openly flouted and treasonably violated. We have seen an intensive campaign to rid the country of the Capones and Dillingers and lesser law violators, while condoning and supporting those in authority, who have destroyed more values, been responsible for more desolation and death, than all the Dillingers and Capones who have existed in the last hundred years. In our own State we have seen the armed forces of the State brought into action to enforce the laws of the State. In the legislature just adjourned we provided for extra patrols to protect our people from lawbreakers, who endanger life and liberty, while absolutely ignoring the fact that this and other States are being overrun by a group who make no pretense to observe the laws of the States.

On page 1599, chapter 601, section 13249 of the code of Iowa, under the title "Waste of food products to increase price", I quote:

"It shall be unlawful for any person, firm, or corporation to willfully destroy, or negligently suffer to go to waste, with intent to increase the price thereof, any food products of any nature or description, without the authority or consent of the local board of health or local health officer of the city, town, or township in which the food products are located."

Under section 13250, title "Punishment", I quote:

"Any person, firm, or corporation violating any of the provisions of the preceding section shall be guilty of a misdemeanor, and, upon conviction, shall pay a fine in a sum not more than $1,000, or be imprisoned for any length of time not exceeding 1 year, or be punished by both such fine and imprisonment."

Just west of Farnhamville, in Calhoun County, Iowa, there lives a farmer who has had some experience with this group—Mr. J. H. Saucke, who signed the first corn and hog contract, not realizing its un-American, arbitrary provisions. On August 27, 1934, he bought six sows for breeding purposes. They were supposed to be open, as he intended breeding them for spring litters. However, it proved he was mistaken, and the 6 brood sows farrowed 45 fine pigs in November. He consulted the local committee and explained the situation, that he had no intention of exceeding his quota, but he had conscientious scruples as to killing 45 thrifty pigs while people were starving.

The chairman of the county committee came to Des Moines with Mr. Saucke, explained the situation to Mr. Smith, in charge of the Des Moines office, who informed him he could either forfeit the $313 that he had received on his contract as first payment and waive the other two, which would amount to about $700, or destroy the pigs.

Mr. Saucke wrote Secretary Wallace, explaining to him that he was not personally responsible for those 45 pigs; that he had no intention of exceeding his quota, but got no satisfaction. He then proposed that he be allowed to consider these 45 pigs as part of his next year's allotment. This was also refused. The matter drifted along until some time in February, these pigs being approximately 90 days old and thrifty, as the photographs will show, a fine size to roast.

He proposed to give them to the relief. They refused to accept them on the grounds that they were too small, although these shoats must have weighed approximately 60 pounds, which would have been considerably less than 1 pound gain a day, so Mr. Saucke was confronted with the alternative of losing around $700 or violating the law of Iowa by criminally destroying human food. In other words, this un-American contract he had been induced to sign placed him at the mercy of a group whose objective was to ignore and override the plain statute of the State of Iowa. Under this contract he was induced to surrender his right to appeal to the courts of his own State for justice; in fact, he became an alien in a way, surrendering his citizenship, and became a subject of the dictator, Henry Wallace, obligated to obey any ruling, present or future, that Wallace might make, and to obey all rules and regulations regardless of the laws of the State of Iowa.

It is not in my heart to condemn those farmers who signed this contract. They were deceived as to real contents; they were cajoled and threatened; they were besieged by a host of Federal job holders and county agents working under the direction of the Department of Agriculture, persuaded by, at least, one organization posing as a farm organization, and with all the powers of the Federal Government used to break down their resistance to this nefarious program. This contract, through which a man surrendered his constitutional rights as an American citizen and became a vassal of a modern dictator, was the keystone of the conspiracy to Russianize American farmers.

The unconstitutional power vested in an appointee of the President, who was not elected by the votes of the people, made it possible for him to withhold from the farmer, who refused to surrender, the right to participate in the so-called "favors" doled out to the farmers. He could not borrow money to buy either feed or seed grain. He could not sell his starving livestock to the Government until he had signed this unthinkable contract. Not only were all these things impressed upon the farmer's mind, but even more criminal was the club used to force him into submission, that if he signed the contract, he would be a partaker of the processing tax, that his brother farmer, who refused to sign the contract, would be compelled to pay. So I wish to emphasize the fact that the real criminals are those responsible for the nefarious program that is nothing less than a conspiracy to induce citizens of the State of Iowa to violate an express provision of the statute of the State.

Paul Moore and J. W. Lenker were tried and convicted of conspiracy and sentenced to the penitentiary in a district court, whose decision was later on sustained by the supreme court of the State. I do not propose to discuss the conviction or criticize the courts, but I do say, with all the earnestness at my command, that if Paul Moore and J. W. Lenker deserved a penitentiary sentence for obstructing the enforcement of a law to destroy human food, those who are responsible for the present program of destroying human food, with millions hungry, using all the powers at their command to compel farmers to violate the plain laws of the State of Iowa, are more guilty and deserve a greater punishment.

There is not a single sentence or paragraph in the Constitution of the United States that empowers or justifies representatives of the Federal Government to go into a sovereign State and conspire to induce or force the citizens of the State to violate a humanitarian and well-sustained law, such as I have read you from the statute of the State of Iowa. That the law has been violated is unquestionable. That it was violated by farmers who were influenced by methods and means surely comes under the conspiracy statute which says—I quote from section 13162—"Conspiracy—defined—common law":

"If any two or more persons conspire or confederate together with the fraudulent or malicious intent wrongfully to injure the

person, character, business, property, or rights in property of another, or to do an illegal act injurious to the public trade, health, morals, or police, or to the administration of public justice, or to commit any felony, they are guilty of a conspiracy, and every such offender and every person who is convicted of a conspiracy at common law shall be imprisoned in the penitentiary not more than 3 years."

In this definition of conspiracy, certainly property rights have been entirely ignored, when they take the value of one farmer's products and give to another, and the farmer under this contract is practically compelled to violate the statute of Iowa to the extent that he becomes a felon.

Section 9906 of the code further illuminates what constitutes conspiracy in the laws of the State of Iowa. This section clearly states that when "partnership, association, or individual, creating, or entering into, or becoming a member of, or a party to, any pool, trust, agreement, contract, combination, confederation, or understanding with any other corporation, partnership, association, or individual, to regulate or fix the price of any article of merchandise or commodity, or to fix or limit the amount or quantity of any article, commodity, or merchandise to be manufactured, mined, or produced, or sold in this State, shall be guilty of a conspiracy."

I think, my friends, that under the provisions of the laws of Iowa, you will agree with me that the destruction of human food or feed for animals is a felony punishable by a fine or imprisonment, and that this corn-hog program, under the definition of what constitutes conspiracy, is guilty of a crime; and we should, and do, demand that the authorities of the State of Iowa recognize the sanctity of their official oaths—which is to support the Constitution of the United States and the State of Iowa, and enforce the laws—and proceed to prosecute every man, or group of men, guilty of inducing the citizens of this State to disobey and ignore the laws of the State. We certainly have spent enough time and money in quibbling over law violations that dwindle into insignificance compared to the present wholesale violations of the statutes of the State. If this program of destruction is permitted to continue, we will eventually reach the place where constitution and statutes will mean less than nothing, when our people will be governed by edicts and proclamations, not by laws made by the people, but, as in olden days, will be governed by tyrants and bigots who have no respect for right, equity, or justice, but are only guided by their own selfish desires, their own greed for power.

The sovereignty of States is at stake. The ruthless overriding of State sovereignty, the ignoring of State statutes by the Federal Government, is the first necessary step to establish a centralized Government, a centralized authority, and a dictator. This propaganda has been very cleverly scattered throughout the Nation. The next and last step is the determined effort of the "brain trust" gang, supported by the President of the United States, to ignore the authority of States and to determine to use the power of the Federal Government to have enacted or defeat legislation in the different States.

As I have said before, we have an aggravated and partially successful attempt to dictate to the last legislature in the State of Iowa. It is surely time to call a halt upon this crazy, ungodly program, wherein every principle of decency and fair play has been violated, in order to build a political machine that would perpetuate the administration and the triple A program of regimentation. Every principle of Americanism that our fathers taught us is being destroyed. Representative government, the constitutional rights of States and individuals, is being slowly but surely strangled. It must stop.

The crimes committed in the name of the new deal in the last 2 years might be condoned and forgiven on the grounds of either ignorance or insanity, but to permit this program of planned scarcity to continue makes us parties to the pact. It is criminal, is in opposition to the law of God, in opposition to man's own conscientious convictions, in opposition to a common sense of humanity, and can only end in disaster.

This racket, as it was intended, has caused hard feelings between the farmer and consumer. It is not surprising that the hungry consumer resents the idea of a planned scarcity that forces prices beyond his ability to obtain the food for himself and family, as he sees food destroyed, and the farmer paid to allow his lands to lie idle, in order to enhance the price he is compelled to pay. No wonder his heart is filled with bitterness and hatred toward the farmer, who, he supposes, is a party to this program.

My friends, the program of starvation is not the farmers' program. This program was conceived in the unholy minds of profiteers and bureaucratic politicians. No farmer or farm organization had anything to say in arranging the triple A program. The real farmer is glad and happy to provide abundantly for your needs and is ready to stand with you, shoulder to shoulder, in demanding for you a compensation for your services that will enable you to procure the things necessary for your comfort and happiness and competency in old age.

I notice in the press where Henry Wallace takes the attitude of the small boy detected in mischief and defends his conduct by saying: "Johnny did it first. You hit my dog; I will hit your cat." He justifies his food-destruction program amid starvation by saying the industries had followed the same methods and that if they would forego the tariff he would forego the processing tax, and his attempt to inject the old tariff squabble that has been used as an alibi, as excuse, by the politicians for many years is, perhaps, the weakest alibi Wallace has ever attempted.

Truly, we have a master mind looking after the farmers' interests.

REGULATION OF PUBLIC-UTILITY HOLDING COMPANIES

The Senate resumed consideration of the bill (S. 2796) to provide for the control and elimination of public-utility holding companies operating, or marketing securities, in interstate and foreign commerce and through the mails, to regulate the transmission and sale of electric energy in interstate commerce, to amend the Federal Water Power Act, and for other purposes.

Mr. WHEELER obtained the floor.

Mr. RUSSELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

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

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

The PRESIDING OFFICER (Mr. TRUMAN in the chair). Ninety Senators having answered to their names, a quorum is present.

Mr. WHEELER. Mr. President, at the outset of my remarks I wish to state that I am not unmindful, when we come to pass legislation which materially affects the great power interests of this country, that we are faced always with one of the greatest and most insidious lobbies that has ever entered the Capitol of this Nation.

I recall a few years ago when we had before this body the question of an investigation of the so-called "Power Trust." I was a comparatively new Member of the body at that time, but was serving upon the Committee on Interstate Commerce, and I recall the terrific fight that was made against the resolution of investigation. I remember not only the fight that was made upon the floor of the Senate, but I recall the tremendous lobby that was out in the corridors, and that filled the galleries when the resolution was pending.

I remember distinctly how every Member of Congress was buttonholed, how his office was visited, how the representatives of local power interests came to the Capitol and called on every Member of the Congress. I remember how they at last succeeded in having the investigation taken out of the Congress of the United States and sent to the Federal Trade Commission, because the power interests themselves—among them Mr. Insull, and others—felt that they could get more lenient treatment before the Federal Trade Commission.

The investigation covered a period of years, and resulted in the disclosure of one of the most gigantic trusts that has ever been developed in the history of this country. It uncovered the practices of the holding companies, which cannot be characterized in any other way, I submit without fear of contradiction, than as fraudulent and as legalized thievery against the people of the United States.

I wish to call attention to the findings of the Federal Trade Commission. Among other things they said:

A list of the questionable practices is attached to part 72–A as appendix A. Such acts and abuses are too various to recite here in detail, but the numerous evil conditions and practices dis-

cussed in the preceding chapters may for the most part be classified under the following general heads:

(1) Pyramiding companies owning or controlling the operating companies for the purpose of enabling a minimum of investment to control a maximum of operating facilities, involving a greedy and highly speculative type of organization detrimental to the financial and economic welfare of the Nation.

(2) Loading the fixed-capital account of public utilities with arbitrary or imaginary amounts in order to establish a base for excessive rates.

(3) Writing up the fixed assets without regard to the cost thereof, with the result of watering the stock or creating a fictitious surplus.

(4) Engaging in transactions of purchase and sale of property or securities with controlled or subsidiary companies for the purpose of recording arbitrary profits or fixing valuations unjustified by market values.

(5) Exaction of payments from affiliated or controlled companies for services in excess of cost or value of such services.

(6) Gross disregard of prudent financing in excessive issues of obligations, imperiling the solvency of the company and involving excessive charges for interest, discount, commissions, redemption, etc.

(7) Manipulating the security markets to deceive stockholders, bondholders, or potential purchasers of its securities.

(8) Putting funds in the call-loan market with the result of greatly stimulating speculation.

(9) Excessive use of conversion privileges for bonds and preferred stocks and of purchase warrants and options with the effect of inducing investors to part with conservative investments for speculative ones.

(10) Misstatement of earned surplus, or failure to distinguish earned from capital surplus, and making payment of dividends from the latter.

(11) Deceptive or illusory methods of dividing, or pretending to divide, earnings or profits.

(12) Including imaginary (or putative) interest in construction costs of a public utility and counting it as a part of earnings.

(13) Deceptive or unsound methods of accounting for assets and liabilities, costs, operating results, and earnings, including write-ups unrealized or fictitious profits, stock dividends, etc.

(14) Corporate organization which gives powers inconsistent with a just division of responsibilities and emoluments as between various groups or parties furnishing capital by loan or by contribution, either directly or indirectly by purchase, succession, or otherwise.

(15) Issuing special voting or management stock giving control at small cost in order to promote the interests of selfish cliques, against the interest and safety of the general stockholders.

(16) Unsafe or mischievous methods of securing loans to the detriment of the lender.

(17) Intercompany financing on a basis disadvantageous to operating company borrowers or lenders.

(18) Evasion of State laws in effecting sales of security issues.

(19) Effecting pretended corporate reorganizations principally for the purpose of evading the payment of Federal income taxes.

In the last analysis the foregoing practices and the conditions which they have created must be judged not only by economic results but by ethical standards. It is not easy to choose words which will adequately characterize various ethical aspects of the situation without an appearance of undue severity. Nevertheless the use of words such as "fraud", "deceit", "misrepresentation", "dishonesty", "breach of trust", and "oppression" are the only suitable terms to apply if one seeks to form an ethical judgment on many practices which have taken sums beyond calculation from the ratepaying and investing public.

The evils recited have flourished in spite of such regulation as has existed. As shown in an exhaustive study made by this Commission, printed in part 69A and discussed at length in chapter XII of this summary report, such evils have to a substantial degree resulted from and even been promoted by legislation and policies in some of these States. It is there shown that no substantial progress is being made, or can be made, by the States generally, toward effective regulation of holding companies. In a few States efforts are being made but generally the situation remains as it was 25 years ago, in spite of the rapid expansion of the holding-company systems and an even more rapid growth of resultant abuses. This refers particularly to the holding-company situation, because there the power of the States is, at best, handicapped by nonresidence and other causes. These compel the States, when any regulatory attempt is made, to resort to indirect methods of control, rather than to direct specific remedies. The States in general are quite helpless when certain of the States grant roving charters with practically unlimited power in what Justice Brandeis has characterized as a race "not of diligence but of laxity."

The holding company in the utility field has been the chief device by which the control and ownership of operating companies has been rapidly concentrated into fewer and fewer hands with every prospect that the process will continue on to Nation-wide monopoly.

Mr. President, I appreciate the fact that there are those in this Chamber whose philosophy differs from mine in that they believe that monopolies are beneficial to the people of this country. But I am one of those who believe that unless we stop the present trend toward monopoly and get back to an economic democracy in the United States, instead of breaking up these bureaucracies which exist at the present time, we are going to build up greater and greater bureaucracies until finally the Nation itself will go down, as every other civilization has gone down in the past.

This bill, unlike many bills which have been proposed in these legislative halls, seeks not for further concentration of power in the hands of the Government of the United States; on the contrary, the tendency of the bill is to make these power-holding companies decentralize, so that they can be controlled by local communities, or can be controlled in a small number of States where they carry on their operating facilities.

It has been said upon the floor of the Senate, and repeated, that the pending bill was not given the study it should have been given before the Committee on Interstate Commerce. As a matter of fact, since I have been a member of the Committee on Interstate Commerce—and I have been a member of that committee for over 12 years—no bill which has been before that committee has had the careful study which was given the pending bill by the committee.

When the utility people give out statements saying that the bill was not given proper consideration, they are not sincere and honest, because when the hearings were completed the head of their committee came to me and said they had had a fair hearing, and thanked me for our courtesy in giving them the kind of hearing they wanted. He said that in the House of Representatives, instead of being able to talk about the bill, there was a discussion of personalities, but before the Senate committee they were confined to a discussion of the bill, and the Senate committee did not enter into a discussion of personalities in the various companies. Therefore I say that those who make the statement upon the floor of the Senate that the bill has not had proper consideration are stating something which in my judgment is not fair to the Senate Committee on Interstate Commerce, and it is not correct. I venture the assertion that the head of the committee representing the utility companies would not have stood on the floor of the Senate and said that they did not have a fair hearing before the Senate committee.

Of course we did not accept all their amendments. However, when they came before the committee I asked them to confine themselves to constructive criticisms of the bill and to offer any constructive suggestions which they might have.

The suggestion that consideration of the bill be postponed or that it be sent back to the committee does not surprise me. I know what the policy of these men was. I am not so naive that I do not know what is back of these suggestions. I know, Mr. President, that the utility people did not desire to be limited in the hearings. What they wished to do was to have the Cities Service Co. come in and take up a lot of time before that committee. What they wanted to do was to have each and every one of the utility companies come in and take up time of the committee so that the bill would never be considered in the present Congress. That is what they wanted, and anyone who does not know that certainly is naive in his understanding of what was going on behind the scenes with reference to this holding-company bill.

Mr. President, I desire to say that the utility companies were given a fair hearing, and I do not propose to stand idly by on the floor of the Senate and let statements be made in the press with reference to the treatment they received go unchallenged. Things can be said which will not be entirely complimentary to some of them, if they were told upon the floor of the Senate.

With reference to the claim that there is no demand for this bill, let me call the Senate's attention to the fact that the bill is not something new. It is the outgrowth of an investigation which was started in Congress a great many years ago when my colleague the late Senator Walsh, one of the greatest lawyers who ever served in this body, started the investigation into the holding companies, which was continued before the Federal Trade Commission, where for 6 or 7 or 8 years they have been conducting the investigation.

Mr. President, this bill is not the result of snap judgment. This legislation and the conditions which exist in the country with reference to holding companies have been subject to consideration from time to time by various Congresses and by legislators of States from one end of the country to the other.

It is said there is no public demand for this legislation. Was there not a public demand which brought up an investigation of these charges? Was there not a public demand which caused the Government of the United States to spend millions of dollars before the present administration ever came into power, to have these companies investigated and their practices shown up and brought to light? Were the studies which have been conducted for all these years, and the recommendations by various bodies, brought about without public demand? I am certain the question of public demand would be answered affirmatively if one went out to the people of any State of the Union and asked them whether or not there is a public demand for this kind of legislation.

Mr. President, Senators have received a great many letters on this subject. I have received 3,000 letters from my constituents asking me to kill this bill. I have hundreds of letters in my possession from laboring men who have written in saying, "I have had to write the letter to you. The company has come to me insisting that I write the letter. They have paid for the postage." I have had other people write to me saying, "I had to write the letter or lose my job." I have been told that companies have asked all their employees to write such letters. I have had letters from stockholders in which they apologized to me for writing letters asking me to kill the proposed legislation, because they did not understand its purpose at the time they wrote their original letters.

I wish to call the attention of the Senate to a few letters I have received. I read one from Quincy, Ill., written by a doctor, as follows:

The press is carrying on the subject matters above mentioned, almost daily, items on the same.

Wisconsin Holding Corporation at Madison, Wis., I became tangled up with in 1931, 1932, 1933. Result of which I lost my last penny in sum of amount $3,900. I have thought you might find something helpful to you in the papers covering the matter and so am mailing them to you. Otherwise please burn them.

Very truly yours,

H. L. GREEN, M. D., *Occidental Building.*

(Enclosures, 390 shares of stock in Wisconsin Holding Co.)

I own a small block of this stock—

The stock of the Standard Gas & Electric Co.—

but at the same time am in complete accord with you and am willing to lose all I put into the company. Propaganda such as this should be stopped. Utilities should be investigated.

The letter is unsigned, but it is written on the back of a pamphlet headed "An Appeal to Investors in Securities of Standard Gas & Electric Co. and Its Subsidiary and Affiliated Companies."

I read a letter from Schenectady, N. Y., dated March 4, 1935:

Electric Bond & Share Corporation mailed me a circular asking me to write to your committee in regard to proposed legislation.

I enclose copy of letter in answer to their plea for my help to enable them to continue their underhanded robbery of stockholders' and consumers' money.

I sincerely hope and pray that legislation will be enacted which will make it impossible for this or any other corporation or company to commit any dishonest act hereafter.

Yours truly,

GEORGE H. HAZELHURST.

The writer encloses a copy of the letter which he received from the Electric Bond & Share Co.

I read a letter from Johnstown, Pa.:

Beg to call your attention to the practice of the Associated Gas & Electric Co. here, of going to the firms of this little town from whom they buy, soliciting letters favoring holding companies, and of course they receive the letters, because the firms cannot afford to lose the business, yet men who must give the letters do not approve of the holding company system.

Just polite blackmail of a new brand.

I have a letter from F. G. Cunningham, of St. Louis, Mo., which I ask to have printed in the RECORD at this point.

The PRESIDING OFFICER. Without objection, it is so ordered.

The letter is as follows:

302 NORTH THIRD STREET,
St. Louis, Mo., April 3, 1935.

MR. ALTON JONES,
First Vice President Cities Service Co.,
No. 60 Wall Street, New York City.

(Personal.)

MY DEAR MR. JONES: Kindly pardon paper on which this note is written, having had the misfortune on investing with the Cities Service Co. my hard-earned funds, and losing everything as a result of the stock being manipulated. I cannot afford to purchase white paper.

Observing in the press that you appeared before the Senate committee in opposition to the Wheeler-Rayburn bill, looking to the abolition of holding companies, I take the liberty of writing you.

My knowledge is confined to my unfortunate experience as a Cities Service investor, and in my opinion the manner in which Henry L. Doherty and his Cities Service set-up treated trusting but unfortunate stockholders in 1929 is sufficient reason why said company at least should be summarily dealt with. Digressing, I was personally horrified when I read that this same Henry L. Doherty had the temerity to act as chairman of President Roosevelt's birthday party.

If you will be patient, I will not type hearsay but give you the actual facts of how cleverly the Henry L. Doherty Cities Service set-up led unfortunate stockholders to financial ruin in 1929. Files of Federal Trade Commission contain copy of a deposition made by H. J. Gray, of this city, case of *Gray* v. *Epstien* (St. Louis Circuit Court case 150267). Gray states under oath that in 1929 a Nation-wide pool operated in stock, that Cities Service common was one of the stocks pooled, and that Henry L. Doherty & Co., fiscal agents for Cities Service, were members of the pool. Federal Trade Commission report on Cities Service Securities Co. is to the effect that Henry L. Doherty & Co. was really Henry L. Doherty; hence it is obvious that Henry L. Doherty was a member of the pool. Being a member, Henry L. Doherty knew or had means of knowing the dissolution date thereof, which history now records as on or about October 16, 1929. Despite the knowledge which Henry L. Doherty undoubtedly had, and which the average stockholder knew not of until too late, this same Henry L. Doherty, as president of the Cities Service Co., mailed circulars to his trusting but unfortunate stockholders, using the Federal mails for same, on or about October 9, 1929, anent further rights as of November 7, 1929. Looking back over 5 years, I am positive the rights literature of on or about October 9, 1929, was not sent out in good faith but merely a come-along to have trusting but uninitiated stockholders cleave to their holdings. Candidly, it fooled the writer, and my local bankers; the pool broke, the stock tumbled from its peak of $68⅛ a share and is now selling under $1 a share. Thousands, the writer included, lost everything, and St. Louis Post Despatch recently printed that Henry L. Doherty made a personal profit of around $19,000,000. Have heard it rumored that this same Doherty sold the stock short, before the pool dissolved, and while I have no proof personally, nothing that Henry L. Doherty did would surprise me. If holding companies therefore function as did the Cities Service in 1929 to mulct the public to the financial advantage of the corporation heads, as outlined above, may the day be soon when they, the holding companies, are done away with.

Very sincerely,

F. G. CUNNINGHAM.

(Copy to United States Senator WHEELER, Senator from Montana, author Wheeler-Rayburn bill, United States Senate, Washington, D. C.)

Mr. WHEELER. I read a letter from Sullivan, Wis.:

A few days ago I listened in on your talk on the President's bill to abolish the holding companies. I was very much pleased the way you handled this matter.

The Wisconsin Gas & Electric Co. has canvassed this territory for signatures to a petition, claiming it will destroy the value of their bonds and stocks. They were very careful who they asked to sign; people not posted on inflation as practiced by the big utilities; people who do not realize the public is paying billions in interest on inflated valuations. * * *

(Signed) J. E. KEANE.

I read a letter from Newark, Ohio:

You are probably aware the people of this section are watching with intense interest the coming up of the Wheeler-Rayburn holding-company bill. It means just this to us of Ohio: The strength of this present administration to carry on and the strength of our President in his coming election. You must not, cannot afford to fail.

Here is another letter:

As a stockholder in various holding utility companies I hope you get your bill through because it may save hardworking

people from losing savings in the future. My thousand is gone now, and if you can prevent others from being swindled by these men more power to you.

(Signed) A. L. DONAHUE.

Here is a letter from Philadelphia:

I am strongly in favor of the Wheeler-Rayburn bill for abolishing holding companies in the public-utility industry.

As one who has suffered by their dishonest methods, I hope by this letter to help counteract the flood of propaganda now being released by these companies.

(Signed) J. W. AYLSWORTH.

I also have a letter from Great Falls, Mont., in which the writer states that he is a stockholder in the Electric Bond & Share Co., and the letter is to the same general effect as the previous letter.

Here is one from Dr. H. C. Galster, of Erie, Pa., as follows:

I wish in a humble way to tell you the wrongs the Associated Gas & Electric System has done me. They sold me $10,000 convertible debenture certificates and also $11,330.76 class A stock; all told, $21,330.76. Class A stock I hear nothing of, and the $10,000 certificate the bank helped me to change for a five thousand. Now, if I did not do this I would lose all. It was told me that within a year I could redeem my ten thousand again, if I so desired. I also bought 200 shares of Niagara-Hudson Power, paid $145 per share; paid $2,925. They said that I should send in my stock and they would give me 1 for every 3 shares or they could not pay any dividends according to law, and my stock would be worth just as much. They paid several times. They then ceased paying. I wrote to them and told them to return my stocks. They had used the mails to defraud me. They said they had not promised to keep on paying, but they did not say that they would not keep on paying. They are earning money every day, as near as I can make out. The international bankers such as Morgan & Co.—in other words, the international thieves—are robbing the United States people. Can nothing be done? Can you not use your good influence for Uncle Sam to take and operate all utilities in these United States of America as these thieves stole all from the United States citizens? I am helpless. I am robbed. Is there no help?

Very truly yours,

H. C. GALSTER.

I have other letters, one from South Philadelphia, one from Columbus, Ohio, from a farmer telling about their advertisements.

Here is a letter from Brigham Young University, Utah. I am sorry the Senator from Utah is not present. The writer says:

I have just received a copy of the February 24 Sunday Transcript from Philadelphia. In conspicuous headlines I am urged against "Legislation Hostile to Holding Companies Employing Millions."

I am responding to one part of the request at least. I am writing to tell you that I am 100 percent behind the movement to secure this particular legislation. I hope that you will use your ability in supporting the Rayburn bill, or some bill of similar import.

In thus expressing my sentiments regarding this measure I feel quite sure I am expressing the attitude of intelligent students of our present economic set-up, and of the people who have been exploited by these bond and security companies.

I have many more such letters. Here is one from Philadelphia; here is one from another city in Pennsylvania; here is one from the president of one of the banks in St. Louis, in which he says:

I think you and the members of your committee will be interested in reading the two enclosed clippings from last night's St. Louis Post-Dispatch and St. Louis Star-Times. If you or your committee want a good object lesson of the abuses of holding companies, I commend your attention to the Laclede Gas Light Co. of St. Louis, which is kept by Utilities Power & Light Corporation—

That is one of Harley Clarke's organizations, as I understand—

which also keeps a number of other operating companies and in turn is kept by at least two or three or four more holding companies.

I am determined to show up as an object lesson the whole situation which involves the Laclede Gas Light Co., of which I and members of my family have been substantial stockholders for three generations.

Here is another letter written by a gentleman formerly connected with the National Association of Securities Commissioners, the letter being dated Jefferson City, Mo.:

I am herewith enclosing an advertisement which appeared in Sunday's issue of some of our daily papers. It is a denunciation of the President's message to Congress on holding companies. We know who ultimately pays the bill.

My knowledge and experience gained during 4 years as securities commissioner of Oklahoma, as president of the Southern Group of Securities Commissioners, as president of the National Association of Securities Commissioners, and my study of utility-holding companies and their various devices and manipulations to centralize wealth and power have convinced be that they are a cancerous growth upon our body politic which should be cut out as soon as possible. As a whole, they serve no good purpose, and they are poisoning the present and filling the future with fear.

The chief purpose of the utility-holding company is to centralize wealth and power in the hands of a few by charging the consumers more and by mulcting investors by questionable devices.

I hope that the bill introduced by you and Congressman SAM RAYBURN becomes a law. Our President is right in the stand he is taking.

I am not going to read any more of these particular letters at this time. I wish, however, to call attention to the fact that the public-utility companies have been going out canvassing the country, demanding of their employees, under the penalty of being discharged, that they write letters to their Representatives in Congress, causing their employees to make house-to-house canvasses, insisting that they get letters from individuals, and paying for the telegrams that come here. They were not, however, satisfied with that. There is not a great holding company, I venture the assertion, which has not brought here from the various States the manager, generally, of a subsidiary operating company and had him buttonhole each Senator.

Can it be claimed that this bill has not been discussed? It has not only been discussed on the floor of the Senate but it has been discussed in every Senator's office in the Capitol; it has been discussed in the office of every Representative in the Capitol. High-priced lobbyists have been employed by the utility magnates for the purpose of preventing the Government of the United States of America from enacting legislation to put an end to the practices which the utility holding companies have been carrying on. Talk to me about this bill not being discussed and some Members of the Senate not knowing anything about it. As I have said, there is not a Senator in this body who has not been interviewed, who has not been buttonholed, for a Senator can hardly step out of the Chamber without having some power lobbyist buttonhole him.

They have discussed it, if they had an opportunity, at the homes of Senators; they discussed it at the clubs; they have discussed it at every dinner where Senators went, if they had an opportunity to do so. They have just been pounding down upon every Senator.

The question, as I see it, is this: The States are unable to regulate these holding companies. Mr. Benton, the attorney for the National Association of State Commissions, came before the committee and testified, as Members of the Senate who are on the committee know, that it is impossible for the States to cope with the holding companies. Is it going to be said that the Government of the United States is unable to cope with them?

I am not unmindful of the fact, Mr. President, that there is some fear in the minds of some of the Members of this body, since the N. R. A. decision, as to whether or not this bill may fall within the condemnation of that decision; but I submit that anyone who reads the decision, and then analyzes the bill, will find that there is not anything in the bill which even remotely is affected by the decision of the Supreme Court in the N. R. A. case.

This measure is proposed for the purpose of regulating, what? Companies that are engaged in interstate commerce. Are these holding companies engaged in interstate commerce? I shall point out to the Senate that, without a question of doubt, the Supreme Court of the United States has held that companies doing this character of business are engaged in interstate commerce. The provisions of this bill come squarely within Federal jurisdiction under the commerce clause. Not only that, but let me say that this bill has been carefully drawn in every detail so as to fit into the commerce clause and the decisions of the Supreme Court of the United States relating to the power of Congress.

No one is more anxious than am I to have such holding-company legislation as may be enacted conform strictly to the constitutional requirements. The holding companies, of

course, would not hesitate to try to break this legislation in the courts if they thought it to their interest to do so. As a matter of fact, they are going around the lobbies saying, "We will knock out this proposed legislation." A chorus of cheers went up from them when the N. R. A. decision was rendered. Immediately, I was importuned to take the measure back to the Interstate Commerce Committee to consider whether or not it came within the ban of the recent decision of the Supreme Court. I was importuned to do it because as they said "You would not want your name attached to a bill that might be declared to be unconstitutional." They were that thoughtful with reference to my welfare.

The holding companies tried to stop, on constitutional grounds, the investigation of utility companies which was conducted by the Federal Trade Commission; but Judge Knox held that the Electric Bond & Share Co. was engaged in interstate commerce; and, of course, there could not be any question about it, because he said, in substance, that, with their officers in New York and their operating and subsidiary companies scattered all over the United States, they were essentially carrying on an interstate business.

In almost every State in the Union, these utility holding companies have always tried to escape State regulation by asserting interstate commerce was involved.

They make the plea, "We do not want to be eliminated because that would hurt our stockholders; we only want to be regulated." If we take out the elimination provisions, then they will want us to take out the regulatory provisions; take out some of the regulatory provisions, and then they will ask that the entire bill be killed.

When we adopted the Walsh resolution calling upon the Federal Trade Commission to conduct an investigation, did they want to be regulated? Did they want to have their records gone into? Not at all. The Electric Bond & Share Co. went into court and said that the Congress was without power to investigate their affairs because they were engaged in intrastate business. Judge Knox, however, held the contrary, as, of course, he had to do; and they never took an appeal to the Supreme Court of the United States.

Mr. VANDENBERG. Mr. President, will the Senator yield for a question?

Mr. WHEELER. Yes.

Mr. VANDENBERG. The Senator is discussing the question of regulation versus elimination?

Mr. WHEELER. Yes.

Mr. VANDENBERG. Regardless of what the companies' attitude might ultimately be toward regulation—and I interrupt myself to say that I cannot understand how there could be any valid argument against regulation—is it the Senator's feeling that elimination at the present time is necessary to the objective to which he addresses himself?

Mr. WHEELER. Let me say to the Senator that I think elimination is necessary in the case of those companies which have subsidiaries scattered from one end of the country to the other. And by "elimination" I mean—and that is the way the bill uses the term—that they either confine their holdings to a single geographically and economically integrated public-utility system, or else cease to be holding companies of utility operating companies.

As I shall point out, the reason for that is that the public-utility business is essentially a local or regional industry. Every utility man who came before the committee blew both hot and cold. In one breath he said the public-utility business should be left entirely to the States because it is essentially a local industry. It is essentially a local industry. I agree with them in that statement. It is essentially a local industry because the people in every community where they have an operating company are vitally affected by the rates which are charged, and industry is affected as well. But in the next breath these utility witnesses argued that they must be allowed to keep and to build up on top of these local companies a Nation-wide financial holding-company structure—without any regard for any principle of regional integration. When we come to holding companies they cease to be a local industry and become an industry which in Montana, for instance, is controlled from New York City. And what we have—which is what we would always have if the holding companies had their way about this bill—is a national interstate financial superstructure built on top of the local or regional operating utility industry. We have in that kind of situation all the evils which we preach against state socialism, because we have a form of private socialism and absentee landlordism. Talk to some of the officers of the operating companies; and if they tell the truth about it as some of them have told me, they would welcome the day they could get rid of the holding companies which have been sapping the very lifeblood out of their operating companies.

How do the holding companies live? They have lived only by milking the operating companies in the way the Federal Trade Commission has pointed out.

Mr. VANDENBERG. Does the Senator contend that the evils cannot be reached by Federal regulation?

Mr. WHEELER. I do not think it is possible effectively to regulate them in their present size and power and concentration of control. My view is that the Government cannot do it. The States have absolutely failed and admit they have failed. It is impossible for the States effectively to regulate them. In my judgment it is impossible for the Government of the United States to be able to regulate effectively these great holding companies which own properties scattered all over the United States.

The extremely important question, it seems to me, is What is facing the Senate right now? Can we regulate them with mere words of regulation? We are human beings. The regulatory body would be made up of human beings. If the Senate of the United States does not have the courage to enact legislation eliminating these great holding companies because of the fact they have brought so much pressure to bear, and because of the fact that their agents are here seeking to intimidate Members of Congress, pleading with them and cajoling them and having their employees writing Members and threatening them—if the power of the Congress is not strong enough, if the Congress cannot have courage enough, to eleminate these unnecessary evils in the form of large holding companies which have no place in our economic system, as I shall point out, then certainly we cannot expect any commission of the Government effectively to regulate them.

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

The PRESIDING OFFICER (Mr. MURRAY in the chair). Does the Senator from Montana yield to the Senator from Michigan?

Mr. WHEELER. I yield.

Mr. VANDENBERG. I am not discussing the question of courage or lack of courage as it may or may not affect the situation. I am addressing myself to the Senator's wisdom and the judgment of the Senate on the facts involved. I am wondering if there is not a real question which rises above the question of propaganda and pressure, namely, elimination under the bill is postponed for a considerable number of years. My chief feeling of the moment is that the country's necessity for recovery is ahead of reform. I am asking the Senator whether or not, during this period of postponed elimination, he has not precipitated a deflationary influence upon the country which would interfere with the recovery element which is so primarily necessary? Will the Senator address himself to that thought briefly?

Mr. WHEELER. I shall be happy to do so. Of course, so far as holding companies are concerned, I shall point out later on how the money is invested in the holding companies and the misrepresentations which have been made in the advertisements, because they hold out the idea that all the money invested in the utility industry is invested in holding companies—whereas, as a matter of fact, the securities of the holding companies are of comparatively small moment. The holding companies which will have to be eliminated are a comparatively small number. Under the terms of the bill they can become investment trusts; they can comply with the standards set up in the bill and establish themselves as regional integrated systems. They can do many

other things. I do not believe it will have a deflationary effect. As a matter of fact, I think when we stop them from carrying on some of the practices in which they have been indulging and from which they have been unconscionably supporting themselves, it will mean they will have to reorganize themselves. Some companies are now in the process of reorganization. Others are trying desparately to keep out of the bankruptcy courts. I venture the assertion that there are many companies which will have to reorganize themselves whether we had a holding-company bill or not.

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

The PRESIDING OFFICER. Does the Senator from Montana yield to the Senator from Delaware?

Mr. WHEELER. I yield.

Mr. HASTINGS. The Senator a moment ago referred to the opinion of Judge Knox about which I should like to read a brief statement made by Mr. Corcoran and Mr. Cohen, found on page 815 of the record, which I think does not bear out the statement made by the Senator from Montana:

> The character of the business of holding companies from the viewpoint of the power of Congress under the commerce clause has been considered in only one case, *Federal Trade Commission* v. *Smith* (1 Fed. Supp. 247), involving the investigatory power of the Federal Trade Commission. A subpena issued by the Commission directing the production of records of the Electric Bond & Share Co. was there upheld on the ground that the company under its service contractor regularly shipped goods in interstate commerce. However, the opinion of Judge Knox dismisses the claim that the service part of the contracts constituted interstate commerce with the statement that performance of those contracts consisted of activities, which, "under authoritative decisions, are not recognized as constituting interstate commerce." The decision itself, resting on the fact that the company sold equipment in interstate commerce, would undoubtedly be followed.

Then Mr. Corcoran and Mr. Cohen continued:

> It by no means follows from the conclusion that the company was not "engaged in commerce" in performing these contracts that a statute could not be drawn to regulate the use of interstate commerce for the performance of such contracts.
>
> Furthermore, the authoritative decisions which Judge Knox cited do not support his conclusions.

In view of what the Senator said, I thought, perhaps, he was not familiar with that language.

Mr. WHEELER. Mr. President, I have the case before me and I am extremely familiar with Judge Knox's decision. He said, among other things:

> By virtue of the control which respondent exercised over the subsidiary operating companies it had a direct effect upon all other business—

All other business!—

> including that in interstate commerce. The power of the National Government over interstate commerce has been held to extend not only to activities which may formally be denominated subjects of interstate commerce, but as to acts which in fact affect that commerce.

The Supreme Court reported that in the case which they have just decided—the Schechter case—but in that case they simply held that the sale of chickens by a local chicken killer in New York City did not directly affect interstate commerce, and possibly they were right about that. It is inconceivable to me how any lawyer who would pass upon the question could, as a matter of fact, say that that transaction was a transaction in interstate commerce.

I desire to read further from Judge Knox:

> Accordingly, an order will be entered directing the individual respondents to answer all questions relating to the cost to Electric Bond & Share Co. of such services as it renders the operating companies in return for the payment of a fee based upon their gross earnings; to the cost of rendering purchasing services which result in interstate movements of materials, apparatus, and supplies to or from any of its subsidiaries for which a separate fee is charged; and to the cost of rendering any services to subsidiary companies engaged in the interstate transmission of electricity or gas for which a separate fee is charged.

Therefore, so far as the holding company is concerned, what does the bill do? After setting forth the policy, here is what the bill says—and this should be borne in mind:

> TRANSACTIONS BY UNREGISTERED HOLDING COMPANIES
>
> SEC. 4. (a) After October 1, 1935, unless a holding company is registered under section 5, it shall be unlawful for such holding company, directly or indirectly—
>
> (1) to sell, transport, transmit, or distribute, or own or operate any capital assets for the transportation, transmission, or distribution of natural or manufactured gas or electric energy—

In what?—

> in interstate commerce;
>
> (2) by use of the mails or any means or instrumentality of interstate commerce, to negotiate, enter into, or take any step in the performance of, any service, sales, or construction contract undertaking to perform services or construction work for, or sell goods to, any public-utility company or holding company;
>
> (3) to distribute, or make any public offering for sale or exchange of any security of such holding company, any subsidiary company or affiliate of such holding company, any public-utility company, or any holding company, by use of the mails or any means or instrumentality of interstate commerce, or to sell any such security having reason to believe that such security, by use of the mails or any means or instrumentality of interstate commerce, will de distributed or made the subject of a public offering;
>
> (4) by use of the mails or any means or instrumentality of interstate commerce, to acquire or negotiate for the acquisition of any security or capital assets of any subsidiary company or affilite of such holding company, any public-utility company, or any holding company;
>
> (5) to engage in any business in interstate commerce; or
>
> (6) to own, hold, or control any security of any subsidiary company thereof that does any of the acts enumerated in paragraphs (1) to (5), inclusive, of this subsection.

So what the bill does is this: It simply says that no company which is not registered can do any of these things in interstate commerce. Then the company comes to the Commission and registers.

But there is more than that. The Commission is authorized to exempt certain holding companies from any provision of the bill. To exempt, first, any holding company whose activities are predominantly confined to intrastate business; second, any holding company whose business is wholly within an integrated section of two or more contiguous States in one of which the holding company is organized; third, any holding company which is only incidentally in the public-utility field, and which derives no material portion of its income from utilities; fourth, any holding company whose subsidiary companies are entirely outside of the United States.

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

Mr. WHEELER. Yes.

Mr. HASTINGS. In view of the Senator's opening statement as to the purpose of the bill, and the great crimes which have been committed by holding companies in this country, may I inquire why the companies in this particular group are to be exempted if the Commission desires to do so?

Mr. WHEELER. I think that is perfectly simple.

Mr. HASTINGS. Then, if it is so simple, may I inquire whether or not the companies that may be exempted with the approval of the Commission will not be in the same position in which they have been and are today in the matter of sending their securities across State lines, and deceiving people, as the Senator says they have done, and taking away the savings of people just as they have done in the past? And if that be true, is not some explanation to the Senate necessary in order that we may know why that is being done?

Mr. WHEELER. I shall be glad to explain it to the Senator as I see it.

First of all, as I said a moment ago, this is not my statement. This, as the Senator would know if he had been there, is the statement made by the public-utility people. They said, "The public-utility business is a local industry. It ought to be regulated locally"; and I agree with them. It ought to be owned locally, and it ought to be controlled locally, and that is what the bill seeks to have done.

The bill has two purposes. It is not only to save the people from losses through the sale of securities of holding companies but it is likewise to save the people of the country from having their operating companies mulcted by the holding companies, as has been shown by the Federal Trade Commission to have been done and as every holding-company executive who came before the committee admitted had been done. There was not a holding-company representative who appeared before the committee who would justify and uphold the practices that had been carried on; but they said, "You should not include all the companies because some of them have been bad."

That brings me to this point: When is a holding company good, and when is it bad? Generally, it depends upon the whim of one man whether a company is good or whether it is bad. As I pointed out previously, a few years ago Mr. Insull was looked upon as one of the greatest geniuses in the utility field in the United States of America. He was heralded from one end of the country to the other by the great university professors, by the newspapers, and by the chambers of commerce as the greatest constructive utility genius in the United States; but he got into some banking and financial operations, and his companies turned, almost overnight, from good companies into bad companies.

Today, a holding company may have a good president who may be living up to the best standards of business conduct. Tomorrow, because of the control that is in the hands of a few people, the company may become an absolutely bad company. There is only one thing that can be done. As I said to the Senator a moment ago, it should be done not only because a utility is a local institution, and should be controlled locally, and should be in touch with the people locally; but just stop to think of a specific case.

Here is one of these great holding companies, for instance, located in New York, that owns a company in Montana, and owns a company in Florida. What does the man in New York know about the conditions in Montana, what should be done there, and how closely in touch is he with the people of Montana? How closely can he be in touch with the people down in Florida?

A utility is essentially a local institution. Essentially, it should be locally controlled and locally owned. I submit that there is not in the bill anywhere anything but that conforms to and complies with the decision of the Supreme Court of the United States, and the standards that they set in the N. R. A. decision.

Mr. HASTINGS. Mr. President, may I inquire of the Senator whether he proposes to discuss and explain section 1?

Mr. WHEELER. Yes; I expect to do that.

Mr. HASTINGS. I do not desire to interrupt the Senator. I simply wish to know whether some explanation of section 1 is to be made by him.

Mr. WHEELER. The Senator means the necessity for the control of holding companies?

Mr. HASTINGS. I mean the necessity of putting section 1 in the bill. That is what I have in mind.

Mr. WHEELER. I appreciate the fact that a motion was made in the committee to strike out section 1. I will say to the Senator briefly that the purpose of putting section 1 in the bill was because it has been customary in some instances to set forth such a series of statements to show the Supreme Court of the United States just exactly what the Congress of the United States had in mind when it passed the legislation.

Mr. HASTINGS. Is it the opinion of the Senator that section 1 is necessary in order to give the Congress jurisdiction over this legislation?

Mr. WHEELER. No; not at all. When the Supreme Court has decided cases, however, in many instances it has gone back and quoted explanations of bills made upon the floor of the Senate. I recall distinctly, for instance, a case involving the Daugherty investigation. If I recall correctly, in that case, where a question was raised as to the power of the Senate to investigate the Department of Justice and Mr. Daugherty, the Supreme Court quoted the language used by the distinguished Senator from Georgia in its opinion upholding the action of the Senate and saying that it was proper. They went back to it for the purpose of ascertaining the intention of the Senate. This section is put in the bill to aid the Supreme Court in arriving at a decision, when it comes to pass upon questions arising under the measure, by informing it as to what was the intention of Congress.

Mr. HASTINGS. Mr. President, I desire to say to the chairman of the committee that I was present when the committee discussed section 1 and the 13 statements of fact contained in paragraph (b) of that section. Since that time I have read the brief in the record prepared by Mr. Corcoran and Mr. Cohen; and after reading that brief—and I call the attention of the chairman to it, as well as other Senators—I reached the definite conclusion that Mr. Corcoran and Mr. Cohen had reached the conclusion that the 13 allegations of fact set forth in section 1 were absolutely necessary in order to give the Congress control over this situation.

Mr. WHEELER. I do not know what was in the minds of Mr. Corcoran and Mr. Cohen, but whatever may have been in their minds with reference to the matter is not controlling with me, and I know it is not controlling with the Senator from Delaware. Nevertheless, let me say to the Senator that I do not know of any more conscientious, honest, and able men than those two gentlemen, who at times have been referred to in the newspapers and by some Members rather derisively.

Mr. HASTINGS. I was not offering any criticism of them, as the Senator will understand.

Mr. WHEELER. No; I understand the Senator.

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

Mr. WHEELER. Yes.

Mr. WHITE. The Senator made a reference to good holding companies and to bad holding companies, and indicated that there should be some necessity for a proper determination as to whether a particular company was or was not good. The inference is that if it is not good it should be banned, and should be eliminated as the bill proposes.

The thing that troubles me most of all about the proposed legislation is my inability to find in it anywhere any intelligible rule laid down for the determination of whether a company is or is not a good company. To illustrate what I have in mind I will direct my question to a specific situation and ask the Senator to comment on it.

The bill defines a holding company, and then proceeds to provide:

> The Commission, upon application, shall by order——

And that is mandatory language——

> declare that a company is not a holding company under clause (A) if * * * it does not, directly or indirectly, exercise such a controlling influence over the management or policies of any public-utility or holding company as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that such company be subject to the obligations, duties, and liabilities imposed in this title upon holding companies.

I submit to the Senator that there is no language there that can apprise any person on earth as to whether a particular company is or is not a proper holding company.

In the first instance it is left entirely to the discretion of the commission which is to be set up, a discretion to be exercised without any guiding rule to determine whether a controlling influence is being exerted. Then this same body, having determined, we will assume, that there is a controlling influence exerted, must then go on and find, again without any guiding rule, that it is necessary in the public interest that that holding company should be declared to be a holding company.

This is illustrative of what is troubling me in connection with the proposed legislation. I cannot find in it any rule laid down, I cannot find anything to guide anybody in connection with it, I cannot see in it anything but the almost arbitrary exercise of an uncontrolled discretion by the body to be set up.

I should like to have the Senator comment on that.

Mr. WHEELER. In the first place, I think the Senator is erroneously reading the bill, and does not understand the provisions of the bill.

Mr. WHITE. I do not think I am erroneously reading it; I may misunderstand it.

Mr. WHEELER. I mean the Senator has an erroneous impression of it. Permit me to say that it has been suggested to me that amendments be proposed providing that only bad companies should be eliminated. If that should be done, in my judgment, the bill would be unconstitutional, under the recent decision of the Supreme Court. That is not attempted in the bill. A standard is set up in the proposed legislation by which we provide that utility-holding companies shall either become integrated regional hold-

ing companies or shall divorce themselves of control of operating utilities in the gas and electric field. We define in the bill what control means. We define holding companies in terms of control. Then, we provide that if they divorce themselves of control they will no longer come within the operation of the measure. We definitely and positively set up standards, just as far as it is possible to do so, and just as far as the Interstate Commerce Act sets up standards to guide the Interstate Commerce Commission with reference to the railroads.

Not only that, but under the proposed legislation every order made by the Commission would have to be based upon findings of fact, after notice and opportunity for hearing, not the rules and regulations, but the orders themselves, and those orders would be reviewable.

The Senator from Maine shakes his head, but I submit that he cannot point out to me in the bill a provision where the Commission is directed to make an order where it is not provided the order must be based upon findings of fact; and then there may be a review.

Mr. O'MAHONEY. Mr. President, will the Senator yield?

Mr. WHEELER. I yield.

Mr. O'MAHONEY. Directing the attention of the Senator to the language on page 7, beginning with line 13, I find the definition of a holding company stated as follows:

> Any person or persons which the Commission determines, after notice and opportunity for hearing, directly or indirectly to exercise such a controlling influence over the management or policies of any public-utility or holding company as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that such person or persons be subject to the obligations, duties, and liabilities imposed in this title upon holding companies.

What is the standard in the bill to guide the Commission in exercising the power of ruling that a person is a holding company?

Mr. WHEELER. A person is described as a corporation, or a person may be an individual.

Mr. O'MAHONEY. A person may be either an individual or a corporation.

Mr. WHEELER. Yes. Then we have to go back and read the definition of a holding company. If the Senator does not mind, I shall discuss that phase a little bit later. I should like now to pursue the thread of my argument, and take up that matter when I come to it.

Mr. O'MAHONEY. The same question would apply to the section which defines subsidiaries and affiliates.

Mr. WHEELER. Yes.

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

Mr. WHEELER. I yield.

Mr. WHITE. May I comment briefly on the question raised by the Senator from Wyoming?

Mr. WHEELER. Certainly.

Mr. WHITE. He referred to the term "person." Of course, under the definition, a holding company may be an individual or a corporation. As bearing on that, let me call attention to section 3 of the bill, which not only authorizes but directs the Commission to exempt any holding company from any provision of the title—

> If and to the extent it—

That is, the Commission—

> deems the exemption not detrimental to the public interest or the interest of investors or consumers.

I again assert that there is no guide there except the discretion of the Commission to control or guide the Commission in the exercise of its function.

Mr. WHEELER. Mr. President, let me answer the Senator at that point, before he goes further.

In order to understand the bill it is necessary to read the various paragraphs together. The Senator can pick out an isolated provision in the bill and comment on it, but it is necessary to read each section of the bill in conjunction with the others in order properly to appreciate the whole measure

I say to the Senator that a guide is set out, because we first set up the standards with reference to companies. Then we provide, as the Senator has said, that they shall be exempted from the provisions of title I under certain circumstances unless the Commission finds that it is detrimental to the public interest. That provision is inserted for the purpose of preventing some company from evading the provisions of the law.

The specific reasons why they should be exempted are set forth in the bill. First, standards are set up so as to enable the Commission to determine what is a holding company and what is an affiliate, and there are set forth standards by which the Commission shall be governed. Secondly, it is provided that certain companies under some circumstances shall be exempted, provided the Commission does not find that such exemption, notwithstanding the fact that they are holding companies controlling public-utility companies, would be detrimental to the public interest.

I think the term "in the public interest" is so well defined that there can be no question in the mind of anyone as to what is or what is not detrimental to the public interest.

Mr. WHITE. I wish to say to the chairman of the committee that I believe I was reasonably diligent in attendance on the hearings.

Mr. WHEELER. Yes; and I thank the Senator.

Mr. WHITE. And in attendance upon the executive sessions. It would take me a very much shorter time to explain what I understand about this bill than to state what I do not understand about it.

I wish to comment a bit more on this "person", who may be held to be a holding company. The same section, section 3 (a), authorizes the Commission to exempt any holding company; that is, any person, from the provisions of the title, to the extent it deems the exemption not detrimental to the public interest or the interest of investors and consumers.

Then, in section 4 it is provided that it shall be unlawful for any holding company to do various things, and under subdivision 6, page 21, it is made unlawful for any person who happens to be a holding company to own or control any security.

It is made unlawful under title 4 for any person to acquire a security in any subsidiary company. That is just an illustration of some of the things which are done under this bill. I have said, and I repeat it, that there is no test laid down to guide or control the Commission in determining whether a holding company shall be exempted from the provisions of the bill or shall not be exempted, or whether a person shall be or shall not be.

Mr. WHEELER. Again I will have to say to the Senator that I cannot agree with him at all with reference to his construction of sections 3 or 4. The bill sets forth the standards which are to be followed, and condemns what is against the public interest, and then it says that certain companies can be and shall be exempt, unless their operation is found to be against the public interest. The public interest is defined, and the standards are set down in the bill, which condemns certain practices, and provides that certain things are to be done.

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

Mr. WHEELER. I yield.

Mr. SHIPSTEAD. The Senator does not mean to say that if a company cannot come within the classification of being one operating in the public interest, and cannot qualify according to the standards laid down in the law, yet the Commission can permit it to continue to operate, although it might not qualify under the law?

Mr. WHEELER. The Commission can exempt certain companies, if it finds that it is wise to exempt them in the public interest. As I said to the Senate a moment ago, the contention was made that those exemptions ought to be made definite and positive, and that there should be no qualifications of those exemptions. I was at first inclined to agree with that view of it. But in that case the exemptions could not have been as broad and would have had to be much more stringent. It became apparent that, unless there were some administrative check against the use of the exemptive provisions for evading the bill, the exemp-

tion provisions would have had to be confined to very narrow and careful limits. It was pointed out that if we made those exemptions absolute and we gave the Commission no discretion, so that if a company came before the Commission and said, "We want to be exempt from the provisions of this section", the Commission would be obliged to grant the request, there might be exemptions granted in cases which would be detrimental to the public interest. We first put in the bill the word "may". The committee changed it to "shall", making it positive that the Commission should exempt certain companies unless the Commission found that the exemption would be detrimental to the public interest. It is now claimed that that is not setting forth a standard. I say it is setting forth a standard, because the Commission must find that it is detrimental to the public interest in order to keep certain companies from getting the benefits of the exemption.

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

Mr. WHEELER. I yield.

Mr. NORRIS. I should like to ask the Senator if in all the hearings and in all the discussion which has taken place before the committee, there was anyone who even suggested that it was for the public interest that one corporation should own another corporation, and that corporation should own another corporation, and that corporation should own another corporation, and that corporation should own a dozen more corporations, and that each one of those dozens should own some more corporations, and that at the end there should be a corporation finally owned which was operating a public utility? Has anyone, at any time, anywhere, in any way defended the existence of such holding companies? The Senator knows the country is full of just such holding companies.

Mr. WHEELER. That is true. These holding companies, as a matter of fact, as the Senator has pointed out, often do not own the other companies. They control them. If they actually did own them it would not be as bad as only controlling them, with great portions of the intermediate securities out in the hands of the public.

Mr. NORRIS. Sometimes they own them and sometimes they control them by means of minority stockholdings.

Mr. WHEELER. In all the instances which came to our attention the larger companies controlled the smaller, whether they owned them or not. In some cases they did not desire to put into the small companies a sufficient amount of money to own them. They would only put a few dollars into a company, and by means of minority stockholding control the company. Or they would simply own the common stock and let the public supply the bulk of the money by buying the preferred stocks and bonds of the underlying companies. In such a case oftentimes 5 cents control $100 worth of stock, or in some instances even 1 cent controls $100 worth of stock.

Some people are so tender toward these companies. They are so fearful lest in the case of some of these holding companies which have been robbing the people of this country, both the investors and the consumers, some injury should be done to them. Those holding companies which are now calling upon their shareholders to write letters to their Representatives and their Senators, are simply calling upon their victims to save them from the results of their—the companies'—own fraudulent practices.

Mr. NORRIS. Mr. President, will the Senator yield for another question?

Mr. WHEELER. I yield.

Mr. NORRIS. Has the Senator in all the investigation made by the committee or from any other source found any means by which these holding companies get any money except as it comes from the corporation at the bottom, which is an operating company selling its products to the consumers, or through selling watered stock to the public? Is there any other way in which they receive any revenue?

Mr. WHEELER. I do not know of any except in those cases where they get dividends from some of their companies.

Mr. NORRIS. Certainly, but where do the dividends come from? Do they not come, after all, from the consumer who is at the bottom of the pyramid and pays the bill? Or do they not get some of their resources from the sale of watered stock?

Mr. WHEELER. Of course. Think of the complaints which are being made. It is said that we are destroying the bonds of these companies. That contention is being made by the companies. What does an investor in a bond of the Associated Gas & Electric Co. get when he buys the bond? He gets a bond which is issued based upon common stock, which in turn is based upon other common stock, which in turn is based upon other common stock, which in turn is based upon other common stock. As a matter of fact the bonds and the preferred stocks in these holding companies in many instances are not worth as much as the common stock of the underlying companies, because they are oftentimes so far removed from the common-stock equities in the operating companies upon which these holding-company securities are based. Some of these bonds are issued upon nothing else but common stock. Yet there are those who stand upon the floor of the Senate and defend that action on the part of the holding companies as being in the public interest.

What the bill seeks to do is to eliminate those holding companies which are engaged in such practices—those holding companies which are scattered over this country and which are doing that sort of thing—those are the companies which have the opportunity and the temptation to engage in all the evil holding-company practices which have been so widely condemned. When holding companies are required to confine themselves to serving the needs of a single geographically and economically integrated utility system, they won't be indulging so fancifully in these evil practices, and if they try it they can be controlled and the evils stamped out.

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

Mr. WHEELER. I yield.

Mr. BARKLEY. Mr. President, I was temporarily called from the Chamber, and I do not know whether the Senator touched upon a matter I had in mind in response to the question of the Senator from Nebraska [Mr. NORRIS]. If the Senator has not already touched upon it, it might be well to do so. The chief, if not the only defense or excuse or reason offered, as I recall, in the hearings, for the continuation of these holding companies is that certain alleged services are rendered to the local operating companies which could not be otherwise rendered. If the Senator has not discussed that question it might be illuminating to discuss it now, because that is practically the only justification which has been made, outside of the pathetic appeal to preserve the values of investments of widows and orphans, and so forth.

Mr. NORRIS. Mr. President, in answering the question I wish the Senator from Montana would take into consideration also that while the excuse for the existence of the holding companies, as the Senator from Kentucky says, is that they perform certain services, is there any evidence that this long chain of holding companies can perform services, and is there any evidence except that in the end those services must be paid for by the operating companies and in turn must be paid for by the consumers? I also ask the Senator in connection with that question whether he has not found it to be true and uncontradicted that these services in many, many cases are charged for on a basis which is exorbitant and wild, and out of all reason?

Mr. WHEELER. There is not the slightest doubt that the Senator is absolutely correct in his statement. I think he has answered the question. As a matter of fact the record shows that for the services the Electric Bond & Share Co. is alleged to have rendered they have made as high as 150 percent. Other companies have made 200 percent. Those services cannot be regulated at all. It is perfectly absurd to say that they can be regulated. Why? Because those services, in many instances, are of a personal character.

How is the Commission going to regulate and say what the value of a lawyer's service is? If a holding company

says, "We furnished legal services to the Florida Light & Power Co., and we charged the Florida Light & Power Co. $100,000 for those services", how is any commission going to say that those personal services were worth only $10,000 instead of $100,000? When a holding company furnishes engineering services which are of personal character, how is the Commission going to regulate those services? It cannot be done, because the value of the services cannot be regulated.

Mr. NORRIS. Is it not true that those services constitute one of the means by which the operating companies are bled to death?

Mr. WHEELER. Of course. The only excuse for having these holding companies is to bleed the operating companies in this manner.

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

Mr. WHEELER. I yield.

Mr. SHIPSTEAD. I believe the hearings show that in one case a holding company charged a subsidiary company $2,000,000 for legal services, and it was shown that what the holding company had actually paid for those services was $1,000,000. It seems to me that holding companies and their charges can be illustrated by comparing them to, say, an 8-story building, 7 stories resting upon the ground floor. There is one holding company on top of another. The one at the top will charge the one on the seventh floor so much for legal services, so much for expert technical advice, and then the one on the seventh floor will charge the one on the sixth floor all it paid to the one on the eighth floor and sufficient in addition to make something for itself; so it goes all the way down, and finally rests upon the operating company at the bottom, which takes it out of the consumer.

Mr. WHEELER. That is exactly correct.

Mr. SHIPSTEAD. The only one which renders service to the public is the operating company, which generates light and power and sells it to the public. All the others are milking companies, so far as the evidence discloses.

Mr. WHEELER. The Senator is absolutely correct.

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

Mr. WHEELER. I yield.

Mr. HASTINGS. The Senator a moment ago, after giving a description of some of the bad practices of these companies, complained because Senators stood on the floor and undertook to protect that sort of situation. I ask him this question: Is it not true, and does not the record show, that there are many of these companies which have not been guilty of any of those bad practices, which furnish to their investors full value for the money they have invested, and which are now merely getting the dividends from the operating companies and passing them on to the stockholders of their own company which has properties distributed all over the country? Is it not true that there are companies such as that which ought to have somebody stand upon the floor and try to prevent their property from being destroyed?

Mr. WHEELER. The Senator asks, Are there not many such companies? No; there are not many of those companies.

Mr. HASTINGS. Are there any?

Mr. WHEELER. There was no such testimony before the committee. In one instance one company has not resorted to some of the practices recently, but every one of these companies has, to some extent, resorted to some of these practices; at least, the reports—and I have before me the reports of the Federal Trade Commission—show each of the companies which have been resorting to these practices.

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

Mr. WHEELER. Yes.

Mr. SHIPSTEAD. There is another source of income which is derived by the holding company at the expense of stockholders of the operating company. We hear a great deal about the investors of the holding companies, but we hear very little about the investors in the local operating companies.

Mr. WHEELER. Of course, this is what has happened with reference to the local operating companies: The holding companies, in many instances have induced the individuals holding common stock and, in some instances, preferred stock to trade their stock to the holding company for holding company stock; and in that way they have obtained control of the operating-company stock in most instances without putting any money into the operating industry.

Mr. SHIPSTEAD. I think another source of income, which I believe is material, has not been mentioned, and that is, in many cases the holding companies have contracts with the operating companies under which they can say, "If you want to extend your lines or erect buildings or buy generators you must buy them from the holding company; you cannot go into the market and protect your own stockholders by seeing to it that you do not pay too much."

Mr. WHEELER. That has been a common practice with them; that is one of the ways in which they get money for the holding company.

Another way in which they get money is to say to the operating company, "You have got to pay so much in income tax." Then they take a lot of cats and dogs, write off their losses, and put in a consolidated return. In that way, as a matter of fact, they kept all the benefits of the consolidated returns for themselves instead of turning them back to the operating companies which had paid it under the guise of taxes.

Mr. SHIPSTEAD. To the holding companies that becomes a source of income?

Mr. WHEELER. Of course that is one of their sources of income.

Mr. SHIPSTEAD. At the expense of the Government?

Mr. WHEELER. Yes. I say it is either a fraud upon the Government of the United States or a fraud upon the stockholders and consumers of electricity of the operating company.

Mr. VANDENBERG. Mr. President, may I ask the Senator a further question?

Mr. WHEELER. I yield.

Mr. VANDENBERG. In respect to the exploitation of investors—and certainly it would be a rash Senator who would undertake to defend some of the things that have been done by holding companies in that field—may I ask the Senator whether there is not protection in the existing securities law against this type of exploitation?

Mr. WHEELER. No; there is not. That is my information, although I am frank to say that I am not very familiar with the operation of that law. The law is not, however, adequate at all, I am informed by the Securities Commission, to protect the investors from exploitation.

Mr. VANDENBERG. I supposed we were hitting at that vice when we enacted the securities law.

Mr. WHEELER. The attempt was made, but the Senator knows that every time we have tried to pass some law which really would deal effectively with the utility companies their lobbyists have swarmed into the Capital of the United States and have gradually broken down this and broken down that, by amendment, so that when the bill finally gets through Congress it does not deal with the situation effectively.

When Congress enacted the Sherman Antitrust Law everyone said, "Now, we have stopped the trusts and monopolies and combinations"; but they were not stopped; they have gone on, have flourished. As a matter of fact, if the Sherman Antitrust Law had been enforced and executed and upheld as Congress intended it should be upheld and as the Congress had it in mind at the time they passed the law, I do not think there would have been much question that holding companies could not have been organized. But gradually the Sherman Law has been whittled away. That is what has been sought by the representatives of the holding companies and representatives of the utility companies with regard to this holding company bill—to whittle it down, and whittle it down, so that it will not be effective when it is put upon the statute books. If they had to accept any regulatory statute at all, they wanted to make sure that it would be a harmless and ineffective one.

Mr. HASTINGS. Mr. President——

Mr. WHEELER. I yield to the Senator.

Mr. HASTINGS. Just along the line of the suggestion made, if the Senator will pardon me, is it not true that, under the Securities Act, there cannot be issued a security by a holding company or any other public-utility company without the consent and the approval of the Securities Commission?

Mr. WHEELER. I have talked to the Securities Commission but I am frank to say that I am not so familiar with the law as I should like to be in order to answer the Senator's question. However, my understanding of the matter is that the Commission itself feels that the law is not designed to deal with situations such as have been described here this afternoon.

Mr. HASTINGS. Of course, the Securities Act does not eliminate holding companies.

Mr. WHEELER. I am not now talking about eliminating holding companies.

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

Mr. WHEELER. I yield.

Mr. BLACK. If the Senator does not object, I have here a statement sent to me by a friend in Alabama, to which I should like to refer. I heard the Senator from Nebraska ask a question about holding companies, and I note that somebody is given the privilege of determining whether they are good or bad. May I ask the Senator, before I call his attention to this statement, is it not true that the investigation of the committee disclosed that in practically all instances when the holding companies were traced to their top or to their bottom, whichever way it may be desired to consider it, it was found that the same interests owned all of them and constituted just one or two or three groups in the country?

Mr. WHEELER. I should say with reference to the holding companies there have been a few groups that have controlled practically all of the utility industry in this country, and I am not sure how closely identified they were with one another. There has been the Insull group and the Electric Bond & Share group and United Corporation as the three largest, and they alone controlled almost one-half of the electric-utility industry in this country in 1932. I think most of the groups have been more or less dominated by one or two banking concerns in New York.

Mr. BLACK. My friend sent me this statement. He looked into the matter, because he so stated in the letter he wrote to me. He says in this statement:

I have a relative in Louisville who owns some Louisville Gas & Electric stock. He asked me who owned the company.

Below is the nearest anybody can come to finding out who owns that company.

Louisville Gas & Electric Co., Louisville, Ky.; controlled by Louisville Gas & Electric Co. of Delaware, 231 South LaSalle St., Chicago, Ill., and Louisville; controlled by Standard Gas & Electric Co., 231 South LaSalle St., Chicago, Ill.; controlled by Standard Power & Light Corporation, 1 Exchange Place, Jersey City, N. J., and 231 South LaSalle St., Chicago, Ill.; controlled jointly by H. M. Byllesby & Co., 231 South LaSalle St., Chicago, Ill., and United States Electric Power Corporation, 1 Exchange Place, Jersey City, N. J.; which is controlled by United Founders, 1 Exchange Place, Jersey City, N. J.; controlled by General Equities, Inc., 1 Exchange Place, Jersey City, N. J.; controlled by Equity Corporation, 1 Exchange Place, Jersey City, N. J.; controlled by Consolidated Funds Corporation, 1 Exchange Place, Jersey City, N. J.

As to who it is that owns Consolidated Funds Corporation, only God and the following directors know:

Directors (showing banking and corporate connections):

E. C. Huntington, Jr., member Satterlee & Canfield, attorneys, New York; director Equity Corporation; D. M. Milton, president and director Equity Corporation; W. B. Nichols, director Interstate Equities Corporation and Chain & General Equities, Inc., president and director W. B. Nichols & Co.; J. E. Whinery, vice president and director J. G. White & Co., Inc.

It will be noted that Mr. Satterlee is a J. P. Morgan & Co. son-in-law; also that Mr. D. M. Milton is a Rockefeller son-in-law.

In order to pay expenses and dividends, each company feeds on and bites the company just below it.

In this instance, the poor little Louisville Gas, at bottom, has eight teats and must needs be busy to keep all of them full for the sucklings to fatten upon.

I am wondering if it would be very difficult to tell how many of those companies were not in the public interest.

Mr. WHEELER. Of course it would not be. I thank the Senator for the interruption.

Something has been said with reference to the Securities Act. Let me call attention to the fact that the Securities Act was really what we commonly call a publicity act—a "Truth in Securities Act"—no more than that.

It does not prevent the issue of the various types of holding company securities and it does not deal with services in the engineering field. It does not, in fact, actually control the issue of any securities—it is merely designed to try to get the truth told about securities which are issued to the public, so that if the public has the time and the ability it can to some extent find out what is being sold to it.

I am sure Senators will be interested in the brief filed by the proponents of the bill, which appears in the hearings beginning at page 807. I think I shall ask that the brief be printed as an appendix to my remarks. That should be done, in my opinion, because it will give Senators an idea of the cases cited and relied upon, and so forth.

Mr. BORAH. Mr. President, has the Senator an extra copy of the brief?

Mr. WHEELER. Yes; I have an extra copy of it, and I shall be glad to furnish it to the Senator.

Mr. NORRIS. Mr. President, may I suggest to the Senator from Montana that he ask to have the brief printed as an appendix to his remarks instead of in the Appendix of the daily RECORD?

Mr. WHEELER. Yes; I have asked that the brief be printed as an exhibit to my remarks. May I have that permission, Mr. President?

The PRESIDING OFFICER. Without objection, the request of the Senator from Montana is granted.

(See exhibit A.)

Mr. ROBINSON. Mr. President, is the Senator prepared to state or would it be inconvenient for him to state what are the principal constitutional questions which have been raised in connection with the proposed legislation?

Mr. HASTINGS. Mr. President, before the Senator answers the Senator from Arkansas, may I ask if he referred to the brief beginning on page 807 of the hearings?

Mr. WHEELER. Yes.

Mr. HASTINGS. In exactly those same words?

Mr. WHEELER. Yes.

Mr. HASTINGS. So it can be found beginning on page 807 of the hearings?

Mr. WHEELER. Yes; it has been printed in the hearings held before the Interstate Commerce Committee and begins at page 807 of those hearings.

Mr. ROBINSON. Reference has been made during the course of the debate—and I have in mind particularly a statement made by the Senator from Maine [Mr. WHITE]—to the alleged constitutional questions which may affect the legislation. I recall that the Senator from Maine stated he had been told by a great lawyer of national renown that there were seven features of the bill which are invalid. I think the exact language that he used was that he could drive a horse and wagon in seven different directions through the bill. I ask the Senator if he is prepared to state at this juncture what constitutional questions are involved?

Mr. WHEELER. I propose to do that now, but let me first say that, of course, I am not familiar with all the constitutional questions which may be raised. I have heard a great many able lawyers, both in Congress and outside of Congress, say that a law was unconstitutional and then have seen the Supreme Court sustain it. I am going to point out why, in my judgment, the bill is constitutional and why it is not rendered in any way invalid by the decision handed down just the other day.

There is no question at all that the holding companies are engaged in interstate commerce. That has been decided by Judge Knox with reference to the Electric Bond & Share Co., as I pointed out today.

Mr. ROBINSON. All utility holding companies are not engaged in interstate commerce?

Mr. WHEELER. As a matter of fact, the bill only seeks to control those companies which are engaged in interstate commerce, and that is all. If a holding company is not en-

gaged in interstate commerce then it does not come under the terms of the bill. The bill is drafted so as to exert Federal jurisdiction only over those holding companies which are essentially and vitally engaged in interstate commerce.

Mr. ROBINSON. I have heard, or read somewhere in the record, a statement that one of the largest holding companies, a holding company which has its situs in New York, is not engaged in interstate commerce and that it, therefore, is not subject to the regulatory provisions of the bill.

Mr. WHEELER. If its situs is in New York and it owns subsidiary companies scattered in other States throughout the country, and carries on business with those subsidiaries, Judge Knox has held that it is engaged in interstate commerce. The very nature of the business of a holding company puts it in interstate commerce because of the fact that its transactions are carried on with subsidiary companies and affiliates in many States, which bring it within interstate commerce, and there is the further fact that these financial holding companies all distribute their securities in interstate commerce and affect investors all over the Nation. It is of the utmost importance to them that they be able to attract investors from every State.

Mr. ROBINSON. My recollection is that the name of the company referred to was the "Con Company." I know very little about its activities.

Mr. WHEELER. I am not familiar with the company, but if it is a holding company whose activities are confined wholly and solely within the State of New York, then it would be exempt under the terms of the bill. If it is a holding company operating only within the State of Pennsylvania it would be exempt. As a matter of fact we have gone further and have said that even if a holding company is engaged in interstate commerce, yet, if viewed as a whole, its activities are essentially intrastate in character, it is exempt.

Mr. ROBINSON. I think it should be added that in the viewpoint of my informant that was a ground of objection to the bill.

Mr. WHEELER. He wanted them included?

Mr. ROBINSON. Yes; his complaint was that it could not be made to reach all the large utility-holding companies, and that the failure to reach those not subject to the bill may in some ways result in advantage to those exempt.

Mr. WHEELER. If they step outside the State of New York then they can be reached under the provisions of the bill unless their control is confined to companies in that State.

Mr. SHIPSTEAD, Mr. BARKLEY, and Mr. BARBOUR addressed the Chair.

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

Mr. WHEELER. I yield first to the Senator from Kentucky.

Mr. BARKLEY. In connection with a company which operates wholly within a State, I understand it is exempt so far as its operations are concerned, but if it operates in two or more States in territory that is integrated, so that it occupies the position of having a connected system, no matter how many the States in which it may operate, it can be exempt from certain provisions of the bill. Any public utility may sell its securities in interstate commerce and may use the mails for that purpose. Of course it would be possible, if the Congress saw fit to do so, to regulate that part of their business which was the selling of securities in interstate commerce or using the mails for that purpose, after the fashion of the securities exchange bill which we passed last year.

Mr. WHEELER. I yield now to the Senator from Minnesota.

Mr. SHIPSTEAD. Mr. President, under the term "local electric companies", we would include a company which operates entirely within one State, as I understand the Senator from Montana.

Mr. WHEELER. Yes.

Mr. SHIPSTEAD. That kind of company would be exempt from the terms of the bill?

Mr. WHEELER. That company would be exempt unless it is controlled by a holding company outside of the State.

Mr. SHIPSTEAD. Such a holding company, unless it was qualified under the exemption, would be required to divest itself of control of local operating companies?

Mr. WHEELER. Yes.

Mr. SHIPSTEAD. What I want to call attention to is this. I have here an advertisement in this morning's Journal of Commerce, of New York, by the Associated Gas & Electric Co. In this advertisement it is said:

> This bill proposes to abolish utility holding companies and to place about 91 percent of local electric companies under stifling political control.

Mr. WHEELER. That just is not so. That is a plain, unadulterated lie, and that is all. It cannot be termed anything else. There is no company I know of anywhere that has been much worse in its abuses and its fraudulent practices than has the Associated Gas & Electric Co.

Mr. SHIPSTEAD. I wanted to call the attention of the Senate to the misinformation which is being spread throughout the country through these public advertisements.

Mr. WHEELER. That company is the worst offender I know of, unless it is Harley Clarke's company or Mr. Insull's companies.

Mr. BARBOUR. Mr. President——

The PRESIDING OFFICER. Does the Senator from Montana yield to the Senator from New Jersey?

Mr. WHEELER. I yield.

Mr. BARBOUR. Do I understand from the discussion which has just taken place that the Senator from Montana contends that companies are exempt from the provisions of this bill if their business is entirely intrastate?

Mr. WHEELER. Yes.

Mr. BARBOUR. Would this situation be changed if any portion, however small, of a company's business were interstate? In other words, has the Senator attempted to define the status of a company whose business may be, we will say, 90 percent intrastate and 10 or 5 or 2 percent interstate?

Mr. WHEELER. That kind of a company can secure an exemption under the terms of the bill.

Mr. BARBOUR. Would not that exemption only follow, however, if the Commission saw fit to grant it?

Mr. WHEELER. I will state what the provision is; and let me say an amendment is to be offered dealing with this subject. We have discussed with one or two Senators an amendment with reference to this provision.

At the present time, as I recall, the bill says that the Commission shall exempt such companies. As the bill came to the Senate, it said that the Commission might exempt them. The committee wrote into the bill a provision that the Commission shall exempt such a company unless, as I recall the language—I am not sure whether I am now giving the language which was adopted in the committee or whether it is the amendment I discussed with some Senator, to which I told him I had no objection—unless the Commission finds that it would be against the public interest to exempt it.

Mr. HASTINGS. That is right.

Mr. BARBOUR. Then, regardless of how small a proportion of the business of any company might be interstate, and regardless of the recent decision of the Supreme Court in relation to this all-important point, the final decision would be left entirely and arbitrarily to the Commission?

Mr. WHEELER. No; the bill provides, on page 17:

> The Commission, by rules and regulations or order, shall exempt any holding company, and every subsidiary company thereof as such, from any provision or provisions of this title, if and to the extent that it deems the exemption not detrimental to the public interest of investors or consumers.

Mr. BARBOUR. The Senator will understand that I am asking the question in perfectly good faith, and all I wish to know is just exactly what is intended by this legislation in this respect.

Mr. WHEELER. I understand that the Senator is asking in good faith.

Mr. BARBOUR. I think there are many companies which are almost entirely engaged in intrastate business, that may, none the less, have a small percentage of their business of an interstate character.

Mr. WHEELER. I may say to the Senator from New Jersey that the purpose of the proposed legislation on the part of the proponents of the bill and on the part of the committee which considered the bill is to exempt that kind of a company. I think that statement makes it clear that it is the duty of the Commission under those circumstances to exempt the company unless they themselves make a finding, based upon evidence, and, as I suggested to some Senator, I forget now just who it was, I am perfectly willing to put the burden of proof upon the Commission, and provide that they would have to make an affirmative finding—that it is against the public interest not to exempt the company, and then that order would be subject to review by the courts. That is quite a different thing.

Mr. BARKLEY. Mr. President——

Mr. WHEELER. Let me answer the Senator from New Jersey further.

The Senator from Maine [Mr. WHITE] argued that that would make the provision unconstitutional. I submit to the Senate that as a matter of fact that comes clearly within the views of the Supreme Court as expressed in its recent decision, because in the decision in the cases where they held administrative action unconstitutional they called attention to the fact that no findings of fact were made. Here, we not only provide that the Commission shall exempt a company if it is engaged in intrastate business, but we say the Commission shall exempt the company if its business is predominantly intrastate.

In other words, let me say to the Senator from New Jersey quite candidly that there is not any question about the fact that the Public Service Corporation of New Jersey, if I understand correctly, would be exempt under the terms of this bill.

Mr. BARBOUR. I am very glad to have the Senator say that; but I also wish to add, and with emphasis, that I, of course, had no particular company in mind, and that I did not ask these questions on behalf of any company or companies.

Mr. WHEELER. No; I say that because of the fact that a representative of the Public Service Corporation of New Jersey came and spoke to me about this very provision of the bill.

Mr. BARBOUR. I had no knowledge of that, Mr. President, nor would I have asked the same question myself had I known this. But, of course, I had no means of knowing about this; and it made no difference anyway, for I was only asking the questions I asked on my own behalf and for my own information.

Mr. HASTINGS. Mr. President, I desire to call the attention of the Senator from Arkansas [Mr. ROBINSON] in particular to the fact——

Mr. WHEELER. Let me say to the Senator that I have been trying to yield to all Senators, but at this time I prefer not to yield further.

Mr. HASTINGS. It was upon this subject that the question was asked by the Senator from Arkansas as to whether this applied to intrastate business or interstate business, and I think the chairman of the committee was mistaken in his answer. I desire to read the definition of a holding company.

Mr. WHEELER. Let me say to the Senator that I cannot yield for that purpose, because if he is merely going to read the definition of a holding company, it could not possibly be a fair answer to the Senator's question, for all through the bill no holding company is taken into the provisions of the bill unless it is engaged in interstate commerce.

Mr. HASTINGS. I wish the Senator would point out to us where that is found in the bill, because I say that there is not a single place where he will find any such thing.

Mr. WHEELER. The Senator from Delaware is entirely in error.

Mr. HASTINGS. I wish the Senator would point out the place to me.

Mr. WHEELER. I will point it out to the Senator.

Mr. SHIPSTEAD. Mr. President——

Mr. WHEELER. I yield to the Senator from Minnesota.

Mr. SHIPSTEAD. I am not sure that I understand the question of the Senator from Delaware; but I desire to say to the Senator from New Jersey [Mr. BARBOUR] that the thought of the committee was not to interfere within a State, but to leave all utilities within a State to be regulated by a State commission. However, on page 18, on line 3, if the Senator from New Jersey will give me his attention, there is described a company that is exempt under this measure. The bill provides on page 18, line 3, that the exemption shall extend to a holding company that—

> is predominantly a public-utility company operating as such in one or more contiguous States, in one of which it is organized.

Would that exempt the Public Service Corporation of New Jersey?

Mr. BARBOUR. I have not the remotest idea. I am not interested personally in any particular concern. I am, however, interested in all the concerns within my State which may or may not come within the provisions of this bill.

Mr. WHEELER. I do not know a thing about it, except that I was told that there are some seven of these companies that are predominantly intrastate, but they hold some little interest outside of New Jersey, in another State. It was not the intention either of the drafters or of the proponents of the bill, nor was it the intention of the committee or the chairman of the committee, to reach that particular class of companies unless, of course, and to the extent that their activities become interstate in character.

For the enlightenment of the Senator from Delaware, however, let me call his attention to the fact, first, that we define a holding company. I feel that the Senator wishes to be fair about the matter, notwithstanding the fact that he may think this is a good political football for him to kick around. He will find differently, I am sure.

Mr. HASTINGS. Never mind about the qualification of the statement that I wish to be fair about it. [Laughter.]

Mr. WHEELER. I will withdraw the qualification.

First of all, the bill defines a holding company. Then section 4 says what?—

> TRANSACTIONS BY UNREGISTERED HOLDING COMPANIES
>
> SEC. 4. (a) After October 1, 1935, unless a holding company is registered under section 5, it shall be unlawful for such holding company, directly or indirectly—
>
> (1) to sell, transport, transmit, or distribute, or own or operate any capital assets for the transportation, transmission, or distribution of, natural or manufactured gas or electric energy in interstate commerce;

And so forth. In other words, a company does not have to register—and that means that it does not come within the provisions of this bill—unless it is engaged directly in interstate activities. Then the bill defines the things that a holding company, which is one of these interstate organizations, but which violates the law by failing to register, cannot do. That brings them up to the point where they have to register if they wish to do these things in interstate commerce. So that is why I say we have to go back and read the definition of a holding company in the light of section 3 and in the light of section 4.

Then, after the holding company is registered, if it wishes to do these things, it is exempted, if and when it is engaged only in intrastate commerce. It is exempted if the predominant part of its business is intrastate business. It is exempted if its holdings are entirely outside the United States of America. So under the definition, as I read those sections together, there cannot be any question at all that the bill does not reach any company unless it is engaged in interstate commerce.

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

Mr. WHEELER. I yield.

Mr. BARKLEY. The Senator is now discussing the provisions of title I?

Mr. WHEELER. Yes.

Mr. BARKLEY. Of course, that has no relationship to the provisions of title II, which provide for regulation of interstate commerce actually during the transmission of the power and electric energy?

Mr. WHEELER. That is correct.

Mr. BARKLEY. An entirely different subject.

Mr. WHEELER. Yes. Let me say this to the Senator: I am not surprised that Senators should have so much misinformation with reference to the proposed legislation as they have, because of the fact that I appreciate that these companies have carried on a propaganda of misrepresentation with reference to the bill. They have either done it deliberately and premeditatedly, and knowing that their propaganda was false and without foundation, or they have done it through absolute ignorance, and I cannot conceive that they have done it except through a deliberate and premeditated intention of spreading false information with reference to the bill.

Section 1 carefully describes the subject matter of the legislation and the factual basis for the exercise of the commerce power to meet the activities of essentially interstate holding companies. The legislation is not drawn for the regulation of acts which "indirectly", as the term was used by the Supreme Court, affect interstate commerce.

Holding companies which directly utilize the channels of interstate commerce for important essential corporate purposes must meet defined reasonable requirements to prevent those holding companies from directly abusing and burdening the channels of interstate commerce.

Restrictions similar to those placed on the use of interstate commerce facilities are placed upon the use of postal facilities, and the bill is carefully drawn so that if any question should arise as to the extent of either power the provisions would be separable.

The regulatory powers of the Securities and Exchange Commission under the bill derive from the jurisdiction established under section 4. If Senators will examine section 4 they will find, as I said a moment ago, that the jurisdiction there claimed under the commerce clause is very direct and very immediate. Section 4 makes it unlawful for a holding company which is not registered for regulation by the Securities and Exchange Commission to do any of the following acts:

1. To sell, transport, transmit, or distribute gas or electric energy in interstate commerce.
2. To negotiate, enter into, or take any step in the performance of any service, sales, or construction contract with a public-utility or holding company by any means or instrumentality of interstate commerce.
3. To distribute or make any public offering of a security by any means or instrumentality of interstate commerce.
4. To acquire or negotiate for the acquisition of any security or capital or utility assets of any subsidiary or affiliate company or any public utility or holding company, by any means or instrumentality of interstate commerce.
5. To engage in any business in interstate commerce.
6. To own or hold or control any security of any subsidiary company that does any of the above-enumerated acts.

Let me say to the Senator from Delaware that if a holding company wants to carry on business, under the terms of this bill it is prohibited from doing any of these things in interstate commerce. If it wants to do business and to use the facilities of interstate commerce, it has to register, and if it registers, then certain exemptions are granted to those companies which carry on their business if they are holding companies doing a business essentially intrastate.

Mr. HASTINGS. Mr. President, will the Senator be good enough to yield to me again?

Mr. WHEELER. Certainly.

Mr. HASTINGS. I am really seriously trying to find out what the bill does provide. Let me call attention to this language in paragraph 1 of section 4, on page 19:

It shall be unlawful for such holding company, directly or indirectly—
(1) To sell, transport, transmit, or distribute, or own or operate any capital assets——

Mr. WHEELER. The Senator is reading from page 19?

Mr. HASTINGS. Yes; from page 19.

Mr. WHEELER. Section 4?

Mr. HASTINGS. Yes.

Mr. WHEELER. It provides:

Unless a holding company is registered * * * it shall be unlawful for such holding company, directly or indirectly—
(1) To sell, transport, transmit, or distribute, or own or operate any capital assets for the transportation, transmission, or distribution of, natural or manufactured gas or electric energy in interstate commerce.

Mr. HASTINGS. Does not the Senator understand that it prohibits them holding any securities of a company engaged in interstate commerce? It is not a question of them being engaged in interstate commerce; the point is that they cannot own and they cannot control any security of any corporation that is engaged in interstate commerce, which to my mind is an entirely different thing.

Mr. WHEELER. The Senator does not understand it. If a holding company controls a company which is engaged in interstate commerce, the holding company is engaged in interstate commerce itself. Section 4, in relation to this question of ownership of securities of a company engaged in interstate commerce is confined to the ownership of securities of a subsidiary company—that is, a company under the control and domination of the holding company. And I say that if such a company is engaged in interstate commerce, then its alter ego, the holding company, is engaged in interstate commerce.

Mr. HASTINGS. This exactly explains the difference between us. The Senator from Montana contends that if a holding company owns stock in a company that is engaged in interstate commerce, it itself is engaged in interstate commerce, and that is where the difference between us arises.

Mr. WHEELER. Let me call attention to the fact that in the Reading Co. case, decided by the Supreme Court of the United States, the Court held that the Reading Co., which was a holding company, was engaged in interstate commerce, under the commerce clause, because it held the stock of a railroad engaged in interstate commerce, and I shall point that out. It held the stock of a coal company and it held the stock of a railroad company, and because it held the stock of a subsidiary company that was engaged in interstate commerce, the Supreme Court held that it was engaged in interstate commerce.

Mr. HASTINGS. In that connection, if the Senator will permit me, he has referred several times to Judge Knox's opinion, and I desire to read three lines of that opinion:

A subpena was issued by the Commission directing the production of records of the Electric Bond & Share Co. was there upheld on the ground that the company under its service contracts regularly shipped goods in interstate commerce.

Mr. WHEELER. Mr. President, I have Judge Knox's opinion before me. I do not know from what the Senator is reading.

Mr. HASTINGS. I am reading from the brief which the Senator put into the record.

Mr. WHEELER. I have the full opinion before me, and I will say to the Senator that Judge Knox in that case held absolutely that the Electric Bond & Share Co. was engaged in interstate commerce, and that it was engaged in interstate commerce because of the fact that it held subsidiaries scattered all over the country, and that in its dealings with them it was essentially engaged in interstate commerce.

I shall point out later that in the Reading case, the Supreme Court of the United States held that a holding company was engaged in interstate commerce because it held the securities of, and controlled another company which was engaged in interstate commerce.

I submit that there is not a lawyer upon the floor of the Senate who will contradict that ruling as a proposition of law, because if I own a company and control a company engaged in interstate commerce, I am engaged in interstate commerce.

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

Mr. WHEELER. I yield.

Mr. BARKLEY. In reading and interpreting section 4, at the bottom of page 19, it is necessary to keep in mind that the bill says that after the 1st of October 1935, unless a hold-

ing company is registered under section 5, it cannot do the things in interstate commerce referred to.

Mr. WHEELER. Of course.

Mr. BARKLEY. Section 5 provides for the registration of holding companies and provides for the information which they shall file and furnish to the Commission, upon the completion of which they will be permitted to do the things which in section 4 they are prohibited from doing without registration. So, in order to understand the language at the bottom of page 19, it is necessary to read section 5, which provides for the registration of holding companies.

Mr. WHEELER. The Senator from Kentucky is entirely right. Section 4 simply says that no unregistered holding company may do certain things in interstate commerce. It may not do them unless it registers. The bill compels the company to register if it is engaged in interstate commerce and wishes to use the facilities of interstate commerce. After it is registered it must furnish certain information.

There is a further provision that a holding company which has already distributed its securities by public offerings through the channels of interstate commerce must also register if its securities are presently outstanding among security holders in the several States. This provision covers the case where a holding company has started in motion, through the channels of interstate commerce, a series of securities transactions which are being continued by others as the securities change hands in interstate commerce in the way contemplated and expected by the holding companies when they were first issued in interstate commerce. In such cases the holding company which issued the securities persists in a continuing interstate relationship with the holders of its securities.

Holding companies falling within any of the categories embraced within section 4 are interstate corporations by reason of their own nature and of their own direct activities. But section 3 of the bill even empowers the Commission to exempt a holding company from any provision of the bill, although it may be engaged in interstate commerce under section 4, if the activities of such company, viewed as a whole, are essentially intrastate. So it is inconceivable to me that the Senator from Delaware [Mr. HASTINGS], distinguished lawyer that he is, should contend for one moment that the bill affects any holding company which is not engaged in interstate commerce.

I call the attention of the Senator to the Reading case; and I am sure he will agree that under that decision any holding company which holds and controls the stock of a company which is engaged in interstate commerce is itself engaged in interstate commerce.

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

Mr. WHEELER. I yield.

Mr. HASTINGS. Of course this particular bill provides that if they own as much as 10 percent that constitutes them a holding company, which is different, I think, from the Reading case.

Mr. WHEELER. That is only prima facie evidence; but even if they hold 40 percent of the stock of a company they may come before the Commission and produce evidence that they are not actually in control of the company, and the Commission is directed to make a finding and to exempt them if they are not actually controlling the company as the word "control" is defined in the bill.

Mr. HASTINGS. The difference between the Senator and myself with respect to this matter is largely based upon the fact that the Senator is assuming that the Commission will exempt companies engaged wholly in intrastate business, but I am not assuming any such thing. I am talking about what the Congress is doing. The Congress is about to take control of business which is wholly intrastate, and leave it up to a commission if, in the public interest, it thinks it is desirable to exempt those companies which are engaged wholly in intrastate business.

Mr. WHEELER. I think the Senator is entirely wrong in that regard because the bill does not reach any company unless that company is engaged in interstate commerce, and then the bill expressly provides that the Commission shall exempt companies even if they are engaged in interstate commerce if, viewed as a whole, their activities are predominantly intrastate in character.

The Senator from Delaware says Congress is giving the Commission power over companies which are not engaged in interstate commerce. If they are not engaged in interstate commerce, and are not using the channels of interstate commerce for the purpose of carrying on their business, they do not have to register in the first place. It is only because they are using the channels of interstate commerce and carrying on interstate business that they are compelled to register in the first place and hence to come under the bill at all.

I think I understand the viewpoint of the Senator. First of all, the bill says that a holding company does not need to register if it does not engage in interstate commerce in the ways set forth in the bill. If it does use the avenues of interstate commerce, then it has to register. Having registered, it is permitted to use the avenues and channels of interstate commerce; and, in addition to that, it may be exempted if its business is primarily the control of operating companies engaged in intrastate business, or of companies which are predominately interested in intrastate business.

There are two classes, as the Senator well knows. A company may be engaged in interstate commerce in several ways. It may be engaged in interstate commerce by reason of the fact that it ships some of its goods in interstate commerce. There cannot be any question at all that Congress has the power to regulate the shipment of goods in interstate commerce. What we are saying in the bill is that a company may not do these things in interstate commerce unless it registers. If it registers, it then may do those things in interstate commerce. After it has registered it is entitled to exemption, even then, under the bill, if it is a holding company and its operating companies are all in one State, or if they are predominantly in one State. Then the bill goes further and says that even when they are in an integrated system, closely integrated into one, they shall be exempted under certain circumstances.

Some people have talked with me in good faith and said, "We are afraid of what the Commission will do." The only reason for providing in the bill that the exemption must not be detrimental to the public interest, and so forth, is for the purpose of seeing to it that some concern which is not honest, which is not sincere, and which is not square, shall not be able to evade the provisions of the law as it is written and as Congress declares the policy to be.

I know that some holding companies which come under the terms of the pending bill have gone to some operating companies which do not come under the bill at all, and have said to them, "Oh, those people are fooling you. The chairman of the committee is fooling you. The proponents of the bill are fooling you." These holding companies are doing this because they want to line up those other companies and the operating companies which have been doing a decent business with some of the dangerous and abusive holding companies to try to defeat this bill. That is the reason they have done it. They are doing it for the same reason that they have lied to their stockholders—we cannot use any other term for it—because they have misrepresented the facts to their stockholders, they have misrepresented the facts to the taxpayers, they have misrepresented the facts to the consuming public, and they have misrepresented the facts to their employees, in order to get them to write and to wire their Senators and their Representatives to defeat this bill.

The obligation to register is imposed upon holding companies under section 4 because of the direct use made of the facilities of interstate commerce, and the collateral regulations imposed are reasonably related to and connected with the use made of interstate commerce. The bill does not make intrastate activities subject to control because they bear some abstract relationship to interstate commerce. Intrastate activities are controlled only insofar as they are direct activities of the registered—that is, the

essentially interstate—holding companies or their subsidiaries.

I will state that again for the benefit of the distinguished Senator from Delaware. The bill does not make intrastate activities subject to control because they bear some abstract relationship to interstate commerce. Intrastate activities are controlled only insofar as they are direct activities of the registered—that is, the essentially interstate—holding companies or their subsidiaries.

Mr. HASTINGS. I agree with that.

Mr. WHEELER. Similarly, intrastate activities conducted by local corporations which are not mere instrumentalities of interstate holding companies are not touched by the bill.

Mr. HASTINGS. In other words, an operating company over which a holding company has no control is not touched by the bill?

Mr. WHEELER. Exactly.

Mr. HASTINGS. There is no dispute about that.

Mr. WHEELER. Nor is a holding company or any subsidiary of a holding company touched by the bill, unless the holding company is engaged in interstate commerce either itself or through the device of controlled subsidiaries.

I have received letters from people who have held stock in operating companies who have been told that they come within the provisions of the bill. A Senator came to me the other day and said he had received letters saying we were going into his State to regulate the retail rates of gas and electricity. Other Senators have said to me, "You are proposing to regulate every person who sells anything to an electric company." Of course that is not true. Someone else has said, "You are going to control every little manufacturing company that sells any electricity whatsoever." That is not so, either.

It must also be borne in mind that a holding company is not an ordinary person, like the ordinary persons affected by N. R. A. and for whose protection the Constitution is particularly solicited. The holding company is not even an ordinary corporation. It is an extraordinarily artificial form of corporation unknown to the common law. The right of one corporation to control another corporation, the right of one artificial person to create another artificial person, is not a natural right. And it is particularly an extraordinary privilege when this control by one corporation of another is not exerted upon a private business subject to the normal restraints of competition, but upon a local utility enjoying the privilege of legalized monopoly.

Mr. HASTINGS. Mr. President, may I interrupt the Senator?

The PRESIDING OFFICER (Mr. McGILL in the chair). Does the Senator from Montana yield to the Senator from Delaware?

Mr. WHEELER. Certainly.

Mr. HASTINGS. Is it not true that the bill not only applies to corporations, but applies to individuals? As a matter of illustration, suppose a man owns a 10-percent interest in an operating company in Albany, N. Y., a 10-percent interest in another operating company in Baltimore, and a 10-percent interest in another operating company in Louisville, Ky. Could not he under the terms of the bill be declared a holding company and compelled to register under paragraph (B) on page 7?

Mr. WHEELER. He could if he was carrying on the same practices and doing the same things a holding corporation does. In order that the Senator may not be misled and may not mislead anybody else—and I do not say that offensively, of course—that man could get exemption if he owns 10 percent, as the Senator suggested. As a matter of fact, everybody knows that in some instances the holding of even as much as 5 percent of the stock of a concern means control of the company. In some instances, I am told that even 1 percent has meant control of the company. The only reason why that provision was incorporated in the bill was so that somebody could not evade the statute and simply put the stock in somebody else's name and exert the same control and carry on the same practices as if it were a holding company. All he has to do if he holds 10 percent stock in a company and does not control that company is to come in and say to the Commission, "I have no control of the company", and he is released.

Mr. HASTINGS. I call the Senator's attention to that in reply to his suggestion about the holding company being a new thing in America.

Mr. WHEELER. It is.

Mr. HASTINGS. The individual is not a new thing, but the Senator is making something new out of him by constituting him a holding company or corporation.

Mr. WHEELER. We are not constituting him a holding company except under extremely unusual conditions and when he is doing unusual things. He is not a holding company and does not need to register unless he is carrying on the activities and doing the things specified in section 4 of the bill.

Mr. HASTINGS. Unless he has such control as to influence the policies of a utility company.

Mr. WHEELER. That has to be read in the light of the provisions of section 4. He does not have to register unless he wants to do the things specified in section 4 of the bill.

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

Mr. WHEELER. I yield.

Mr. BARKLEY. There is nothing new about the use of the word "person" in a measure of this sort or in any law that requires numerous definitions. "Person" is always defined as not only a person, but a company or association, corporation or whatever it is proposed to regulate or deal with. There is nothing new about the definition at all.

Mr. HASTINGS. May I call the attention of the Senator to the fact that it distinctly provides on page 6 that "person" means an individual or company?

Mr. BARKLEY. That is true of many laws we have enacted.

Mr. WHEELER. Practically every law we have ever put upon the statute books contains such a provision; and I assert again that the holding company is not a natural thing and was never sanctioned by the common law.

The right of one corporation to control another corporation, the right of one artificial person to create another artificial person is not a natural right. It is particularly an extraordinary privilege when this control by one corporation of another is not exerted upon a private business subject to the normal restraints of competition, but upon a local utility enjoying the privilege of legalized monopoly. As the President put it in his message:

It—

The holding company—

is a device which does not belong to our American traditions of law and business. It is only a comparatively late innovation. It dates definitely from the same unfortunate period which marked the beginnings of a host of other laxities in our corporate law which have brought us to our present disgraceful condition of competitive charter-mongering between our States. And it offers too well-demonstrated temptation to and facility for abuse to be tolerated as a recognized business institution. That temptation and that facility are inherent in its very nature.

The holding company relationship is peculiarly susceptible of abuse. It is peculiarly susceptible of fraudulent use. The management of a holding company, because of the very nature of a holding company, has to serve two masters—the holding company itself and the subsidiaries which it controls and on which it feeds. As Mr. Justice Stone recently very significantly observed:

I venture to assert that when the history of the financial era which has just drawn to a close comes to be written, most of its mistakes and its major faults will be ascribed to the failure to observe the fiduciary principle, the precept as old as the Holy Writ, that a man cannot serve two masters.

Congress has not permitted the existence of the holding company in the corporate laws for the District of Columbia, which make it expressly unlawful for any company to use any of its funds for the purchase of any stock in any other corporation. A holding company cannot be incorporated in the District of Columbia because the Congress of the United States has forbidden it. Certainly Congress may provide that the same policy it prescribes for the District of Columbia

should be followed in prescribing conditions under which the corporate form may be used for the conduct of interstate business activities. The dangers of the holding company form and the persistent and recurring evidence of abuse of the holding company form are such as to give Congress virtually the same power over holding companies in interstate commerce or using the mails as it has over cases involving fraud or deceit as to which Congress has exercised and the Supreme Court has sustained the widest measure of control.

There is nothing in the Supreme Court's decision in the Schechter case that departs from the realistic conception of interstate commerce first enunciated by Mr. Justice Holmes in *Swift & Co.* v. *U. S.* (196 U. S. 375), and reasserted by Chief Justice Taft in *Chicago Board of Trade* v. *Olsen* (262 U. S. 1), that—

> Commerce among the States is not a technical legal conception but a practical one, drawn from the course of business.

Utility operations, except where they extend beyond State lines, are of course matters of local or State concern; but the control of local utilities by great holding companies whose powers and dominions transcend State lines is necessarily a matter of national or interstate concern. The control of interstate holding companies is not an attempt to reach purely local or intrastate matters, but is an attempt to reach an interstate and national problem, the magnitude of which can scarcely be exaggerated. The investigations of the Federal Trade Commission have made it abundantly clear that the nature and character of the security transactions and other financial and business transactions of the great holding companies affect interstate commerce as directly as combinations and conspiracies in restraint of interstate trade (*Coronado Coal Co.* v. *United Mine Workers*, 268 U. S. 295).

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

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

Mr. WHEELER. I yield.

Mr. TYDINGS. I should like to ask the Senator, who has made more of a study of this matter than I have, whether or not the two following amendments at first blush seem to him to be wise, and whether or not he would accept them.

The first amendment is to add a new section, to be numbered 34, after line 14, page 91, title I, as follows:

> CONFLICT OF JURISDICTION
>
> If, with respect to the issue, sale, or guarantee of a security, the method of keeping accounts, the filing of reports, or the acquisition or disposition of any security, capital assets, or facilities, or any other requirement of this title or of any rule, regulation, or order thereunder, any person is subject to the law of any State, or regulation by a State commission, such person shall not be subject to the requirements of this title, or of any rule, regulation, or order thereunder, with respect to the same subject matter.

Mr. WHEELER. I will say offhand that of course I could not accept that amendment for this reason: I discussed that very amendment with another Senator——

Mr. TYDINGS. If the Senator has done that, I shall not take his time further. The suggested amendment has just come to my hands, and I was wondering whether or not it had been discussed, and whether the Senator would accept it.

Mr. WHEELER. I have discussed it with another Senator; and let me say that the amendment is so broadly drawn that as a matter of fact it would completely exempt practically all the subsidiary or holding companies in some States.

Let me say to the Senator further that the amendment was drafted, as I understand, by a member of one of the public-service commissions. Their counsel testified before our committee. The general counsel for the public-utility commissions all over the United States, Mr. Benton, submitted an amendment that he desired to have made, which he thought would protect the States, and we adopted his amendment on the subject.

Mr. TYDINGS. I did not wish to interrupt the Senator, but I knew the point had been raised, and I was not sure whether the Senator had seen the amendment, or had discussed it. Therefore, I simply desired to bring it to his attention.

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

The PRESIDING OFFICER. Does the Senator from Montana yield to the Senator from Colorado?

Mr. WHEELER. I do.

Mr. COSTIGAN. In connection with what the able Senator from Montana is saying in his very enlightening address, has the Senator discussed the effect of holding companies upon what I like to think of as the paramount right of the public to reasonable rates in utility companies, based upon prudent investments, and the fact that such right is more or less nullified by holding companies?

Mr. WHEELER. We discussed that matter earlier in the afternoon. Mr. Benton, representing the State commissions, said that the State commissions had repeatedly gone on record against these holding companies, and stated that the local commissions were unable to control them.

Mr. COSTIGAN. It was not my privilege to hear the Senator's discussion of that subject. I am very glad he has discussed it.

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

Mr. WHEELER. I yield.

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

The PRESIDING OFFICER. The absence of a quorum having been suggested, the clerk will call the roll.

The Chief Clerk called the roll, and the following Senators answered to their names:

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

The PRESIDING OFFICER (Mr. MURRAY in the chair). Ninety Senators having answered to their names, a quorum is present.

Mr. WHEELER. Mr. President, at the time the quorum was called I was directing attention to the constitutionality of the proposed law as at present drafted. I stated that the investigations of the Federal Trade Commission had made abundantly clear that the nature and character of the security transactions and other financial and business transactions of the great holding companies affect interstate commerce as directly as do those of combinations and conspiracies in restraint of trade, citing for consideration the case of Coronado Coal Co. against United Mine Workers, reported in Two Hundred and Sixty-eighth United States Reports, 295.

One thought, perhaps, above all others underlies the Schechter case. The Court plainly was appalled by the dangers of concentration of economic power which might grow out of the centralized control of all economic activities by the Federal Government. Mr. Justice Cardozo in his concurring opinion stressed the fact that "the code does not confine itself to the suppression of methods of competition that would be classified as unfair according to accepted business standards or accepted norms of ethics." The Court obviously was protecting our traditional decentralized democracy by striking at legislation which went beyond curbing economic power and sought to put behind the natural economic power of business combination and concentration the

coercive power of Government. Whether the Court should have made its decision on any such theory I will not undertake to say.

I desire to point out the fact that when the National Recovery Act was before this body for consideration I was one of those who voted against it on the ground, first, that, in my judgment, it contained provisions which were unconstitutional, and second, that it contained provisions which were economically unsound.

It is obvious that the holding-company legislation is the exact converse of the kind of legislation which the Supreme Court seemed to fear. The holding-company legislation is not an exercise of political power for the purpose of augmenting the economic power of organized industry. On the contrary, its purpose is to limit the concentration of power of economic enterprise in the public interest so that it will not menace the safety of the Nation. If government has not the power to curb the economic fascism and the private socialism of holding-company domination, the Federal Government would be without power to prevent the very dangers to democracy which the Supreme Court feared lurked in the National Recovery Act. The clearly expressed ultimate end of this legislation is to decentralize into separate regional organizations the few vast overconcentrated national organizations which control our local power plants all over the country. It is a necessary exercise of political power on a national scale to meet the strength and challenge of the organization of economic power on a national scale. But it is an exercise of national political power to decentralize economic power, and if it succeeds in that end we may ultimately be able to leave complete regulation of the regional economic units it creates to regional and local regulation.

Chief Justice Hughes expressly recognized as legitimate and constitutional that kind of power which this legislation entrusts to an administrative commission when he said the—

> Constitution has never been regarded as denying to Congress the necessary resources of flexibility and practicality which will enable it to perform its function in laying down policies and establishing standards, while leaving to selected instrumentalities the making of subordinate rules within prescribed limits and the determination of facts to which the policy as declared by the Legislature is to apply.

I submit that that is exactly what this bill does; nothing more, nothing less.

This proposed legislation, like the Interstate Commerce Act, will be a code of law promulgated by Congress itself, regulating the activities of holding companies in order to assure the performance of their services upon just and reasonable terms, and to facilitate the application by an expert administrative agency of the standards prescribed by Congress.

That is the language of the Supreme Court of the United States, and that is exactly what the bill does. We have laid down standards. We have declared the policy. Then we have said to the Commission, "You can make necessary rules and regulations to carry out the provisions of Congress within certain definite fixed standards." We have then said to the Commission, "However, when you make an order upon this subject you must base it on a finding of fact, just as the Interstate Commerce Commission does"; and then there is provision for appeal from that finding of fact to the courts.

The holding companies have filed a memorandum on certain practical and legal aspects of the provisions relative to dissolution of holding companies—a question quite apart from the problem of what is interstate commerce. If the questions therein discussed were novel, possibly Congress might entertain some question as to the ultimate decision of the Supreme Court thereon. It so happens that the power of Congress to compel dissolution, as required by this bill, was definitely settled in a number of decisions under the Sherman, Clayton, and Hepburn Acts, particularly in the decision in the so-called "Reading case", *Continental Insurance Co.* v. *United States* (259 U. S. 156). Indeed, in the Sherman Act and the Hepburn Act cases, the Court found implied a good deal which this bill takes care to provide expressly and in detail.

That is the fact of the matter. In the Reading case and in the cases under the Sherman Act and the Helpburn Act, the courts had to make their own rules and regulations for the dissolution of the companies, because no machinery was set up by the Congress of the United States by which to do it. In the present bill we have spelled out more than Congress did in the Sherman Antitrust Act, or in the Hepburn Act, because we have set up the machinery by which these dissolutions and reorganizations may take place, so that they may be effected with the smallest possible damage to those who hold the bonds and who hold the stock.

Before I get through I desire to call attention to another matter. There was a question which puzzled me somewhat with reference to the constitutionality of congressional action which said to a company, "You must dissolve, and the stock must be split up." Particularly was I somewhat fearful of it because of the fact that I questioned the power of Congress to do it; but the Supreme Court of the United States in no unmistakable terms has held that that is absolutely constitutional.

Mr. HASTINGS. In what case?

Mr. WHEELER. In *Continental Insurance Co.* v. *United States* (259 U. S. 156). I wish to call this languageg to the Senator's attention because it expressly sanctions what I said a moment ago with reference to holding companies:

> This Court found that by a scheme of reorganization, adopted in December 1895, the Philadelphia & Reading Railway Co. and the Philadelphia & Reading Coal & Iron Co. combined to deliver into the complete control of the board of directors of a holding company, the Reading Co., all of the property of much the largest single coal company operating in the Schuylkill field, and almost 1,000 miles of railway over which its coal must find its access to interstate markets, and that this constituted a combination unduly to restrain and monopolize interstate commerce in anthracite coal; that the Philadelphia & Reading Railway Co. and the Philadelphia & Reading Coal & Iron Co. had thereafter but one stockholder, the Reading Co., and that thus the Reading Co. served to pool the property, the activities, and the profits of the three companies. The Court further found that through the acquisition by the Reading Co. of a majority of the stock of the Central Railroad Co. of New Jersey, which itself owned 90 percent of the stock in the Lehigh & Wilkes-Barre Coal Co., the illegal power of the combination was greatly increased, and that the relation of common control through stock ownership of the Philadelphia & Reading Railway Co. and the Philadelphia & Reading Coal & Iron Co. and that of the Central Railroad Co. of New Jersey and the Lehigh Valley & Wilkes-Barre Coal Co. were violations of the commodities clause, requiring dissolution.

The Court required a dissolution. Was the Reading Company engaged in interstate commerce? It was engaged in interstate commerce only to the extent that it controlled a coal company, and that it controlled the stock of a railroad company which was engaged in interstate commerce.

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

Mr. WHEELER. I yield.

Mr. HASTINGS. I do not wish to take the Senator's time now to discuss that question; but my understanding is that in the Continental Insurance Co. case, there was a conspiracy to stifle competition in interstate trade. I desire to inquire whether, in the case of holding companies—that is, companies holding securities or having control of securities—competition is a part of the thing complained of at all. Is there any competition in the case of holding companies of operating utilities? Operating utilities are not in competition at all. There is no question of competition here such as there was in the case from which the Senator is reading.

Mr. WHEELER. As the Senator from Indiana [Mr. MINTON] has reminded me, that was the basis for giving jurisdiction to the Federal Government. The Senator from Delaware must appreciate the fact that I cite this case merely to show that the only reason why the court could get jurisdiction was that the company was engaged in interstate commerce. As a matter of fact, it made no difference whether or not it was engaged in doing something that the court considered wrong; but was it engaged in interstate commerce? Once it was decided that it was engaged in interstate commerce, Congress had the power to say to the company, "You must divest yourself of coal interests

under the Hepburn Act." And Congress did that without spelling it out, and the court carried out the policy of Congress by compelling a separation of the coal business and the railroad business.

Mr. HASTINGS. Of course, the Northern Securities case was wholly that of a holding company; but what happened was that there had been a conspiracy between two railroads, which were in competition, to take the stock of those two railroads and combine them in this holding company. Of course, that was a thing over which Congress had control, because the competition of those two companies which theretofore were in competition with each other had been eliminated by means of the holding company; and nobody doubted that Congress had authority in a case like that.

Mr. WHEELER. That is not the case here at all. In the first place, the Congress of the United States could not take control of the Northern Securities Co. by reason of the fact that competition was stifled. It could only get control of the Northern Securities Co. by reason of the fact that it was engaged in interstate commerce. If it had not been engaged in interstate commerce, Congress could not have gotten control of the Northern Securities Co.

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

Mr. WHEELER. I yield.

Mr. BONE. In a constitutional sense, the only reason why Congress can take jurisdiction to pass this sort of legislation is that the subject matter of the legislation is interstate commerce——

Mr. WHEELER. Of course.

Mr. BONE. And not because some offense might be committed against the criminal laws, or because there might be a control of competition that might be vicious and bad.

Mr. WHEELER. Of course.

I was about to call attention to the fact of a further holding in the case from which I was reading. As I said to the Senator, I was first in doubt as to whether or not Congress had the power to say to a company which was engaged in interstate commerce before any law on the subject was passed, "You must break up your bonds and your mortgages." That was a question which disturbed me. I find in the opinion this language:

> The power of the Court under the Hherman antitrust law to disregard the letter and legal effect of the bonds and general mortgage under the circumstances of this case, in order to achieve the purpose of the law, we cannot question. The principles laid down and followed in the case of *United States* v. *Southern Pacific Co.*, decided today, post, 214, leave no doubt upon this point. Indeed, the case which we there cite, *Philadelphia, Baltimore & Washington R. R. Co.* v. *Schubert* (224 U. S. 603, 613, 614), is a stronger instance of the power of Congress in regulating interstate commerce to disregard contracts than is needed in this case, because there it was enforced as to a contract made before the regulation. It may be conceded, as averred, that the bondholders in this case were innocent of any actual sense of wrongdoing, that they relied on the advice of eminent counsel in assuming that the union of the railroad and the coal companies under the control of the holding company was not a violation of the Sherman law, and that some of them surrendered bonds secured by underlying liens of unquestioned validity created before the enactment of the Sherman law. Nevertheless, spread all over the face of the general mortgage was the information and notice of the union of the railway and coal properties for the very purpose which is the head and front of the offending under the antitrust law.

Mr. HASTINGS. Mr. President, will the Senator put in the RECORD the case from which he is reading?

Mr. WHEELER. At a later time during the course of my remarks I shall insert in the RECORD a synopsis of it.

Under the commodities clause of the Hepburn Act, railroads were prohibited by Congress from transporting commodities in which they had an interest. Congress simply said to the railroads of the country, "You are engaged in interstate commerce and as such an interstate instrumentality you cannot carry commodities in which you are interested."

How did Congress get that power? There had been nothing wrong about the railroads carrying the commodities in which they were interested. It was a perfectly legal thing for them to do. It may be argued that I have an automobile and I am permitted to carry potatoes or anything else I may produce. The Congress said to the railroads of the country, "We deem it an unfair practice—a practice so susceptible of abuse and injury to your competitors and to the public that we prohibit it. You are engaged in interstate commerce and because of that fact Congress has the power to regulate and control you—and to determine, subject to the limitation of reasonableness, what form that regulation and control shall take. If you are interested in such a producing company you must divorce yourself from it." Such was the statement of the Government of the United States to the Reading Co., which was a holding company, because it controlled and operated one of the large coal companies and carried coal over its railroads.

As a result the Reading Railroad and others which served important coal fields found themselves in a position where they had to get rid of their interests in the coal which they transported. A suit was instituted by the Government against the Reading Co., a holding company, and its subsidiaries, the Philadelphia & Reading Railway Co. and the Philadelphia & Reading Coal Co., to compel separation of the railroad properties from the coal properties and to break up the common control of the railroad properties and the coal properties by the holding company.

That is the identical thing we are doing here. We are simply saying, "You cannot have this great holding company. If you want to continue to exist you can do some other things. If you want to be an investment trust, you can hold these stocks in that way, but you cannot hold these stocks and at the same time control the operation of the subsidiary companies." We say this because it is an unfair and highly dangerous thing. It is an unsound practice in economics. It is an unsound condition for a holding company engaged in business, representing to investors, on the one hand, that it is going to take care of their money, to be operating, on the other hand, the companies themselves. It is unsound from a national standpoint for a great holding company which has its principal place of business in the city of New York to be operating companies in Montana, 2,000 miles away.

It is unsound and against the national policy for a holding company, which has its offices in New York, to be sitting on both sides of the table, the same directors and the same officers of both the holding company and subsidiary companies trying to serve two masters. It is an unsound practice for a holding company with its right hand to make contracts which are unconscionable and unjustifiable with subsidiary operating companies which it controls with its left hand.

By reason of that national policy which we adopt with reference to interstate commerce, we say to those concerns which are engaged in interstate commerce that they have to comply with certain definite provisions of the law, that they must turn themselves into an investment trust, divorce themselves from control of the operating companies. If they want to continue to carry on business in interstate commerce in the country, if they want to use the mails of the country, they must play the game according to the rules laid down. That is all the bill proposes to do.

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

Mr. WHEELER. Certainly.

Mr. BARKLEY. It is obvious the Senator cannot conclude his discussion of the bill this evening. Does he desire to proceed further, or is he willing to take a recess at this time?

Mr. WHEELER. I should like to proceed for a few moments longer so as to finish my reference to the cases I have in mind.

The Government was successful in its suit against the Reading Co., and in the Continental Insurance Co. case, the court and the opposing factions worked out a plan for segregating the coal interest from the railroad. There were no guides for the reorganization in either the Hepburn Act or the Sherman Act, both of which were involved in the suit—and this is what I meant when I said that in these cases the court found implied what is expressly spelled out in section 11 of the holding-company bill.

The Court avoided sacrificing the assets—and put into effect a plan which involved a departure from the contract provisions of the general mortgage—whereby the coal and railroad properties under the mortgage were appraised and the mortgage separated as to each so that the bondholders received separate liens on the coal property and on the railroad property. Concerning its power to readjust equitably existing liens and substitute therefor "judicially ascertained equivalents", the Court said:

The power of the Court under the Sherman antitrust law to disregard the letter and legal effect of the bonds and general mortgage under the circumstances of this case, in order to achieve the purpose of the law, we cannot question * * *. If the complete and final separation of one item of the mortgaged property from the remainder becomes essential to the due enforcement of either named law (i. e., the Sherman Act or the Hepburn Act) the Court charged with such enforcement may take control of that item, free it from the consolidating tendency of the mortgage, and substitute therefor its judicially ascertained equivalent * * *.

Now, 13 years after the Court had worked out and applied this doctrine, the present bill takes the principle laid down by the Supreme Court and enacts it as the procedure for handling these cases where the combination and concentration of properties in the same hands is contrary to the policy of the law as declared by Congress.

I have previously asked to have inserted at the close of my remarks the brief on the constitutional question and the legal phases of the bill, so that it may be available to every Member of the Senate who cares to take the time to read it.

I now desire to call attention to a number of cases, and I am going to ask to have inserted at this point in my remarks a brief statement touching upon that phase of the matter.

The PRESIDING OFFICER. Without objection, it is so ordered.

The statement is as follows:

It is well settled under the decisions of the Supreme Court that Congress may prescribe the conditions under which corporate business may be transacted in interstate commerce. In doing so it may require the dissolution of existing State corporations or the divestment of property by such corporations where such dissolution or divestment is reasonably considered necessary to bring about desired conditions in the field of interstate commerce. This has been done both under the antitrust laws (*Northern Securities Co.* v. *U. S.*, 193 U. S. 197; *U. S.* v. *Standard Oil Co.*, 221 U. S. 1; *U. S.* v. *American Tobacco Co.*, 221 U. S. 106; *U S.* v. *Union Pacific R. Co.*, 226 U. S. 61), and under the commodities clause of the Hepburn Act (*U. S.* v. *Delaware & Hudson Co.*, 213 U. S. 366; *U. S.* v. *Reading Co.*, 253 U. S. 26; *Continental Ins. Co.* v. *U. S.*, 259 U. S. 156). This plenary power necessarily overrides property rights existing by virtue of previous private contracts (*Armour Packing Co.* v. *U. S.*, 209 U. S. 56; *Philadelphia, Baltimore & Washington R. Co.* v. *Schubert*, 224 U. S. 603; *Continental Insurance Co.* v. *U. S.*, 259 U. S. 156; *U. S.* v. *Southern Pacific Co.*, 259 U. S. 214, 230).

This doctrine was recently reaffirmed, with illustrations drawn from cases under the commerce clause, in the decision upholding the constitutionality of the joint resolution abrogating the gold clauses in private contracts (*Norman* v. *Baltimore & Ohio R. Co.*, decided Feb. 18, 1935). Chief Justice Hughes there wrote:

"Contracts, however expressed, cannot fetter the constitutional authority of the Congress. Contracts may create rights of property, but when contracts deal with a subject matter which lies within the control of Congress, they have a congenital infirmity. Parties cannot remove their transactions from the reach of dominant constitutional power by making contracts about them."

Rights existing under the authority of State laws are subject to the same congenital infirmity when their enforcement conflicts with an exercise of the paramount power of Congress over interstate commerce (*Northern Securities Co.* v. *U. S.* (193 U. S. 197); *U. S.* v. *Delaware & Hudson Co.* (213 U. S. 366)). In the latter case, which upheld the constitutionality of the commodities clause, the Court gave clear expression to its basic premise:

"Let it be conceded at once that the power to regulate commerce possessed by Congress is in the nature of things ever enduring, and therefore the right to exert it today, tomorrow, and at all times in its plenitude must remain free from restrictions and limitations arising or asserted to arise by State laws, whether enacted before or after Congress has chosen to exert and apply its lawful power to regulate" (213 U. S., at 405–6).

EXHIBIT A

MEMORANDUM IN SUPPORT OF THE CONSTITUTIONALITY OF PUBLIC-UTILITY HOLDING COMPANY BILL

This memorandum is concerned with the constitutional issues presented by the bill to establish Federal control and, subject to certain exceptions, ultimate elimination of public-utility holding companies.

The factors making necessary national control of public-utility holding companies are enumerated at the outset of the bill. Public-utility holding companies and their subsidiary companies are there declared to be affected with a national public interest in that their use of the mails and instrumentalities of interstate commerce has created many abuses which cannot be corrected by the States and call for Federal legislation. This section specifies both the uses made by holding companies of interstate commerce and the mails and the abuses to which the interstate business of these companies has given rise. It concludes with a declaration of policy stating the objectives of the act; to eliminate the specified abuses, to provide for the simplification of holding-company systems and the elimination therefrom of properties not economically and geographically related, and at the end of 5 years to abolish holding companies.

The essentially interstate character of the principal holding-company transactions and practices lies in the fact that their securities are widely distributed by means of the mails and instrumentalities of interstate commerce; that they continually make use of those channels of communication in the making and performance of contracts with their subsidiary companies; and that these controlled operating companies themselves engage in interstate commerce in gas and electricity on a large and growing scale.

The evils that accompany these interstate activities cannot be corrected by State legislation. The sale of holding-company securities has been completely unregulated by States having jurisdiction over the subsidiary public-utility companies; these securities have been issued upon the basis of fictitious asset values and in anticipation of excessive revenues and paper profits at the expense of the underlying operating companies; absence of uniform accounts conceals the unsubstantial foundation of these security issues and makes it impossible for investors to secure the information necessary for an adequate appraisal of the financial position of the companies. These findings point to the fact that this unsound capitalization operates to the detriment not only of the widely scattered investors, but also of the consumers of the utility products of the underlying operating companies. To support their overcapitalized security structures holding companies are compelled to squeeze the maximum possible revenue out of the operating companies. They resist voluntary rate reductions which might strengthen their subsidiaries by increasing the consumption of gas and electricity; they seek unfair insiders' profits through a great variety of intercompany transactions; they obstruct State regulation through their control of the accounting practices and financial policies of the public-utility companies; and their mad scramble for operating properties has brought under common control widely distant utility facilities, creating gerrymandered systems in complete disregard of the economies of management and the integration and coordination of related properties. The growth of the superholding company has tended to concentrate control of the electric and gas utilities in the hands of a few powerful groups having an insignificant stake in their ownership. This concentration of control has tended substantially to restrict competition in supplying the construction and other needs of a great and growing industry.

The ultimate cure of the evils described in this introductory section which the bill adopts is the abolition of the holding company conducting activities in interstate commerce and by means of the mails, except where it is necessary for the operation of a geographically and economically integrated public-utility system. This prohibition is postponed, however, to permit orderly liquidation and reorganization, and so to prevent unnecessary destruction of existing security values. The bill also prescribes regulation designed to furnish protection to investors and consumers during the remaining period of holding-company existence and as a permanent measure in the case of those companies that are permitted to continue. This is achieved through registration. It is made unlawful for a holding company to make certain uses of the mails or the instrumentalities of interstate commerce unless that company is registered with the Securities and Exchange Commission; the regulatory provisions of the bill are then directed not at holding companies generally but at registered holding companies and their subsidiaries. Thus compliance with these regulatory provisions is made a condition of the use of the mails and the channels of interstate commerce for the transportation or transmission of gas or electricity, the making or performance of service, sales, and construction contracts, the marketing of securities, the acquisition of securities and capital assets, and the performance of any business in interstate commerce; it is also made a condition of the ownership of securities in certain other companies that conduct these specified interstate activities or otherwise engage in interstate commerce, and of the continued existence of a holding company which has during the past 10 years distributed securities in interstate commerce which are now outstanding in the hands of persons residing outside of the State in which the holding company is incorporated. The regulation imposed through this device of registration is directly related in all its details to the elimination of the evils described in the outset. Registration itself affords the opportunity for the collection of full information regarding the holding company and its related companies.

Further information must be filed before a security may be issued by a holding company, and security issues are made the subject of complete regulation, designed not merely to afford full disclosure of all relevant facts to prospective investors, but also positive protection against recurrence of the wild-cat financing of the past. The securities which may be issued by holding companies are limited to common stocks having a par value and

first lien bonds. Every new security must be reasonably adapted to the security structure of the holding-company system, must bear proper relation to sums prudently invested in the underlying public-utility properties and must be appropriate to the operation of an integrated utility system. Fees and the terms and conditions on which a security is sold are subjected to Commission control. The business in which holding companies may engage is restricted so that the purchaser of utility holding company securities will be an investor only in the utility industry and closely related auxiliary businesses, and will not be deceived by the utility name when purchasing an interest in a speculative venture essentially unrelated to the utility enterprise. Holdings are limited furthermore to the securities and properties of domestic utilities; those in foreign countries may not be retained in the same system. Ownership in a single system of competing gas and electric facilities which tends to monopoly and the suppression of competition whenever contrary to the policy, if not the letter, of State law is eliminated. The extension of utility systems through the acquisition of securities and capital assets is subject to strict commission supervision and control; all acquisitions must be appropriate to the operation of an integrated utility system, and must be at a fair price bearing a reasonable relation to the prudent investment in the underlying property. Registered holding companies and their subsidiaries must keep their accounts in a manner prescribed by the Commission and must file the reports which the Commission shall require as necessary to afford complete information regarding all the details of holding-company operations.

These regulations of the financial operations of holding companies are supplemented by complete regulation of the transactions between companies within a holding-company system and between such companies and interests affiliated with them in such a way that their dealings are not controlled by arm's-length bargaining. The service, sales, and construction contracts by which holding companies reap large profits at the expense of utility consumers are eliminated. Such services may be performed for utilities under holding-company control only if they are bought in the open market under fully competitive conditions, or if they are performed on a cooperative basis by a mutual company subject to the complete supervision of the Federal Power Commission. Other transactions between such controlled utility companies and other companies in the same holding company system or affiliated with companies in that system must be conducted in accordance with rules and regulations designed to eliminate all hidden profits and unfair advantages resulting from the common interests of both parties to the transaction.

In all these regulatory provisions there is the single objective of protecting both investors and consumers from the abuses of the past and their recurrence in new forms. In this there is no conflict between the investor and the consumer. The interests of both are served when utility enterprises are placed on the solid foundation of a sure return upon a sound capitalization. The bill decrees the elimination from the channels of interstate commerce of holding companies that do not take the immediate steps which will turn their business toward establishment on that solid foundation. It decrees also the more certain purification of the entire utility industry through the eventual elimination of all holding companies that do not serve a necessary purpose. To provide an orderly progress in that direction, the bill establishes the procedural machinery for the reorganization and dissolution of present companies under Commission control and trusteeship. It thus seeks to eliminate the injury to both investors and consumers that is likely to accompany the present wasteful and inefficient receivership and reorganization proceedings.

The constitutional issues which the bill presents are of two types: First, the authority of Congress rather than the State legislatures to carry out its objectives under powers expressly delegated to it by the Constitution; and, second, its authority to employ the particular regulatory measures embodied in the bill without violating the restrictions imposed by the Constitution upon all Federal legislation. As to the first, the discussion will show that the bill falls within the authority granted to Congress to regulate interstate commerce and its power over the mails. As to the second, it will show that there is no violation of the due-process clause of the fifth amendment, or of the implied prohibition against the delegation by Congress of its legislative power.

THE COMMERCE POWER

The business of the holding company as described in the introductory section of the bill is one which depends for its existence and for its every function upon constant and systematic use of the channels of interstate communication. The advantage generally claimed for the holding company in its facility for attracting capital on a large scale for diversified investments necessarily depends upon the marketing of securities throughout the country. Congress has already in the Securities Act and the Securities Exchange Act asserted its jurisdiction over such security distribution, whether it employs the mails, interstate communications, or securities exchanges. In the case of the holding company this ground of jurisdiction alone is necessarily more far-reaching than the case of many other corporations, for security distribution is a more fundamental part of holding-company operations than it is in other businesses. The other activities of holding companies are equally interstate in character. Centralized management and control by one company of local utilities situated all over the country would be impossible without the transmission of information and instructions from one State to another. Performance of the intercompany transactions carried on in most of the holding-company systems requires similar interstate communication and also the shipment of goods across State lines. That these multi-State activities of holding companies constitute interstate commerce in the constitutional sense can scarcely be open to question (*Gibbons* v. *Ogden*, 9 Wheat. 1; *Western Union Telegraph Co.* v. *Pendleton*, 122 U. S. 347; *Champion* v. *Ames*, 188 U. S. 321; *International Text Book Co.* v. *Pigg*, 217 U. S. 91; *Western Union Telegraph Co.* v. *Foster*, 247 U. S. 105; *Dahnke-Walker Co.* v. *Bondurant*, 257 U. S. 282).

Constant interstate communication is as essential a characteristic of the business of the holding company as it was of that of the correspondence school described in *International Text Book Co.* v. *Pigg*, (217 U. S. 91). There the Supreme Court held that a State statute requiring foreign corporations to secure permission to engage in business within the State could not constitutionally be applied to a corporation conducting a correspondence school. The company had an agent in the State, and the Court held that it was doing business there, but that business was held in its essential characteristics, commerce among the States within the meaning of the Constitution of the United States.

"It involved, as already suggested, regular and practically continuous intercourse between the Textbook Co., located in Pennsylvania, and its scholars and agents in Kansas and other States. That intercourse was conducted by means of correspondence through the mails and with such agents and scholars. While this mode of imparting and acquiring an education may not be such as is commonly adopted in this country, it is a lawful mode to accomplish the valuable purpose the parties have in view. More than that, this mode—looking at the contracts between the Textbook Co. and its scholars—involved the transportation from the State where the school is located to the State in which the scholar resides, of books, apparatus, and papers, useful or necessary in the particular course of study the scholar is pursuing, and in respect of which he is entitled, from time to time, by virtue of his contract, to information and direction. Intercourse of that kind, between parties in different States, particularly when it is in execution of a valid contract between them, is as much intercourse in the constitutional sense, as intercourse by means of the telegraph, a new species of commerce, to use the words of this Court in *Pensacola Teleg. Co.* v. *Western U. Teleg. Co.*, 96 U. S. 1, 9, 24, L. ed. 708, 710" (217 U. S. at 106).

To the extent that holding companies make use of the instrumentalities of interstate commerce in the conduct of their business, Congress has complete authority to determine the regulatory provisions that shall be applied to that business. It is firmly established that, acting within the scope of its delegated authority, Congress has the same full power that the States enjoy to employ any regulatory device which it deems reasonably adapted to the public welfare. The point has been clearly expressed by Mr. Justice Brandeis in *Hamilton* v. *Kentucky Distilleries and Warehouse Co.* (251 U. S. 146, 156):

"That the United States lacks the police power, and that this was reserved to the States by the tenth amendment, is true. But it is none the less true that when the United States exerts any of the powers conferred upon it by the Constitution, no valid objection can be based upon the fact that such exercise may be attended by the same incidents which attend the exercise by a State of its police power, or that it may tend to accomplish a similar purpose."

In later cases under the commerce clause the Court has spoken of a national "police power * * * within the field of interstate commerce" (*Brooks* v. *U. S.*, 267 U. S. 432, 437) and of business "affected by a public use of a national character and subject to national regulation" (*Stafford* v. *Wallace*, 258 U. S. 495, 516; *Chicago Board of Trade* v. *Olsen*, 262 U. S. 1, 41). Whether or not the language of "police power" of "public use" is employed is immaterial; the conclusion is inescapable that the power to regulate commerce includes the power to resort to all regulatory methods which the States may use.

One method which Congress might employ in the regulation of interstate commerce carried on by holding companies is Federal incorporation. A Federal incorporation law for companies doing an interstate business has frequently been advocated by both conservatives and liberals. See Report of Federal Trade Commission, Compilation of Proposals and Views for and Against Federal Incorporation or Licensing of Corporations (S. Doc. No. 92, part 69A, 70th Cong., 1st sess.). The president of the New York Stock Exchange has publicly gone on record in favor of a Federal law governing the incorporation of companies (Stock Exchange Practices, hearings before Committee on Banking and Currency, United States Senate, 73d Cong., 1st sess., National Securities Exchange Act, 1934, pt. 15, p. 6637). Congress has resorted to the creation of corporations both in the exercise of its fiscal power (*McCulloch* v. *Maryland*, 4 Wheat. 315) and under its power to regulate commerce (*Pacific Railroad Removal cases*, 115 U. S. 1).

Without employing its power to create corporations, Congress may prescribe the conditions under which corporate business may be transacted in interstate commerce. In doing so it may require the dissolution of existing State corporations or the divestment of property by such corporations where such dissolution or divestment is reasonably considered necessary to bring about desired conditions in the field of interstate commerce. This has been done both under the antitrust laws (*Northern Securities Co.* v. *U. S.*, 193 U. S. 197; *U. S.* v. *Standard Oil Co.*, 221 U. S. 1; *U. S.* v. *American Tobacco Co.*, 221 U. S. 106; *U. S.* v. *Union Pacific R. Co.*, 226 U. S. 61) and under the commodities clause of the Hepburn Act (*U. S.* v. *Delaware & Hudson Co.*, 213 U. S. 366; *U. S.* v. *Reading Co.*, 253 U. S. 26; *Continental Insurance Co.* v. *U. S.*, 259 U. S. 156). This plenary power necessarily overrides property rights existing by virtue of previous private contracts (*Armour Packing Co.* v. *U. S.*, 209 U. S.

56; *Philadelphia, Baltimore & Washington R. Co.*, v. *Schubert*, 224 U. S. 603; *Continental Insurance Co.* v. *U. S.*, 259 U. S. 156; *U. S.* v. *Southern Pacific Co.*, 259 U. S. 214, 230).

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"Contracts, however express, cannot fetter the constitutional authority of the Congress. Contracts may create rights of property, but when contracts deal with a subject matter which lies within the control of the Congress they have a congenital infirmity. Parties cannot remove their transactions from the reach of dominant constitutional power by making contracts about them."

Rights existing under the authority of State laws are subject to the same congenital infirmity when their enforcement conflicts with an exercise of the paramount power of Congress over interstate commerce (*Northern Securities Co.* v. *U. S.*, 193 U. S. 197; *U. S.* v. *Delaware & Hudson Co.*, 213 U. S. 366). In the latter case, which upheld the constitutionality of the commodities clause, the Court gave clear expression to its basic premise:

"Let it be conceded at once that the power to regulate commerce possessed by Congress is in the nature of things ever enduring, and therefore the right to exert it today, tomorrow, and at all times in its plenitude must remain free from restrictions and limitations arising or asserted to arise by State laws, whether enacted before or after Congress has chosen to exert and apply its lawful power to regulate" (213 U. S. at 405–406).

The decisions sustaining the Federal power of incorporation and the power to take away corporate privileges granted by the States furnish ample authority to uphold a compulsory Federal incorporation law—one under which a Federal charter would be required before any corporation could do business by use of the instrumentalities of interstate commerce. The constitutional authority of Congress to withhold the privilege of doing business as a corporation in interstate commerce unless a Federal charter or license is secured has been strongly supported by several of the country's most prominent lawyers. (George W. Wickersham, State Control of Foreign Corporations, 19 Yale L. J. 1; Frank B. Kellogg, Federal Incorporation and Control, 20 Yale L. J., 177; Victor Morawetz, The Power of Congress to Enact Federal Incorporation Laws and to Regulate Corporations, 26 Harv. L. Rev. 667.) See also William W. Cooke, Federal Railroad Incorporation (26 Yale L. J. 207); Charles W. Bunn, Federal Incorporation of Railway Companies (30 Harv. L. Rev. 589); Miles W. Watkins, Federal Incorporation (17 Mich. L. Rev. 64, 145, 238). The conclusions of former Secretary Kellogg in the article cited merits notice:

"If within its power to regulate commerce Congress may absolutely inhibit such commerce, of course it may prescribe the rule under which it shall be conducted; but it is not necessary to go to the length that Congress has power to absolutely inhibit commerce between the States. Within its power of regulation it may prescribe what corporations may so engage in such commerce. It may prohibit corporations organized under foreign governments from engaging therein, or prescribe the regulations under which they may so engage. It may equally prohibit certain corporations from so engaging or as a condition prescribe the regulations under which they may engage. * * * The means by which Congress shall keep open and free the avenues of commerce are for it alone to decide so long as they are appropriate and are not prohibited" (20 Yale L. J. at 187–188).

Among the conditions which Congress might impose in granting the privilege of engaging in interstate commerce as a corporation is a complete prohibition against the ownership of stock in other corporations. Stock ownership by corporations was unknown at common law; in some States it is not permitted today. In the case of corporations organized in the District of Columbia, which are created by Federal authority, Congress has adhered to the common-law rule. The Code of the District provides that "It shall not be lawful for any company to use any of its funds for the purchase of any stock in any other corporation" (title 5, sec. 276). Certainly the same policy could be followed in prescribing the conditions under which the corporate form may be used for the conduct of interstate business activities.

Without resorting to compulsory Federal incorporation, Congress would by the present bill exercise the lesser power to condition the conduct of interstate business by holding companies organized under State laws. The device by which these conditions would be enforced is the compulsory registration of all holding companies desiring to use the channels of interstate commerce for the transmission of goods or communications essential to the conduct of their business. It is essentially the same device which Congress has employed in the Securities Act of 1933 and the Securities Exchange Act of 1934. It has full constitutional support in a long line of cases upholding the power of Congress to prohibit the shipment of certain articles in interstate commerce, and to impose conditions upon such shipments. The leading case, and the one in which the subject has been given fullest discussion, is *Champion* v. *Ames* (188 U. S. 321), where the Court upheld a prohibition against the transportation of lottery tickets from one State to another. After deciding that lottery tickets are subjects of commerce, Mr. Justice Harlan appropriately posed certain rhetorical questions:

"Are we prepared to say that a provision which is, in effect, a prohibition of the carriage of such articles from State to State is not a fit or appropriate mode for the regulation of that particular kind of commerce? If lottery traffic, carried on through interstate commerce, is a matter of which Congress may take cognizance and over which its power may be exerted, can it be possible that it must tolerate the traffic, and simply regulate the manner in which it may be carried on? Or may not Congress, for the protection of the people of all the States, and under the power to regulate interstate commerce, devise such means, within the scope of the Constitution, and not prohibited by it, as will drive that traffic out of commerce among the States?" (188 U. S. at 355).

After rejecting the contention that the prohibition of lotteries was a matter reserved to the States by the tenth amendment, Mr. Justice Harlan continued:

"As a State may, for the purpose of guarding the morals of its own people, forbid all sales of lottery tickets within its limits, so Congress, for the purpose of guarding the people of the United States against the wide-spread pestilence of lotteries and to protect the commerce which concerns all the States, may prohibit the carrying of lottery tickets from one State to another. In legislating upon the subject of the traffic in lottery tickets, as carried on through interstate commerce, Congress only supplemented the action of those States—perhaps all of them—which, for the protection of the public morals, prohibit the drawing of lotteries, as well as the sale or circulation of lottery tickets, within their respective limits. It said, in effect, that it would not permit the declared policy of the States, which sought to protect their people against the mischiefs of the lottery business, to be overthrown or disregarded by the agency of interstate commerce. We should hesitate long before adjudging that an evil of such appalling character, carried on through interstate commerce, cannot be met and crushed by the only power competent to that end. We say competent to that end, because Congress alone has the power to occupy, by legislation, the whole field of interstate commerce. What was said by this Court upon a former occasion may well be here repeated: 'That framers of the Constitution never intended that the legislative power of the Nation should find itself incapable of disposing of a subject matter specifically committed to its charge.' In re Rahrer, 140 U. S. 545, 562" (188 U. S. at 357–358).

Prior to the decision in *Champion* v. *Ames*, the Supreme Court had assumed the validity of the act prohibiting the interstate transportation of livestock known to be affected with a contagious disease (*M., K. & T. R. Co.* v. *Haber*, 169 U. S. 613, 621; *Reid* v. *Colorado*, 187 U. S. 137, 149–150). Since that case was decided it has sustained the Pure Food and Drug Act prohibiting the transportation in interstate commerce of adulterated or misbranded articles (*Hipolite Egg Co.* v. *U. S.*, 220 U. S. 45; *Weeks* v. *United States*, 245 U. S. 618; the White Slave Traffic Act, *Hoke* v. *United States*, 227 U. S. 308; *Caminetti* v. *United States*, 242 U. S. 470); and the National Motor Vehicle Theft Act, punishing the interstate transportation of stolen motor vehicles (*Brooks* v. *United States*, 267 U. S. 432). On the same theory it has upheld a prohibition of the importation of prize-fight films designed for public exhibition (*Weber* v. *Freed*, 239 U. S. 325); while the importation provision was the only one before the Court in that case, the same statute prohibits the transportation of such films from one State to another, and the source of congressional power is the same over interstate as over foreign commerce. In addition, the Supreme Court has upheld statutes forbidding the introduction of intoxicating liquors into States in which their use is prohibited (*In re Rahrer*, 140 U. S. 545; *Clark Distilling Co.* v. *Western Maryland Railway Co.*, 242 U. S. 311). The theory of this legislation has been embodied in the recent Hawes-Cooper Act regulating the transportation of prison-made goods. Compare *Alabama* v. *Arizona* (291 U. S. 266).

Prohibition of the interstate transportation of oil produced in violation of the State proration requirements was authorized by section 9 (c) of the National Industrial Recovery Act. When this provision was held unconstitutional as an invalid delegation of legislative power (*Panama Refining Co.* v. *Ryan*, decided Jan. 7, 1935), the Congress promptly imposed the same prohibition by passing the Connally oil-control bill. A statute has long been on the books prohibiting the interstate shipment of game secured or handled in violation of a State law; this act was upheld by the circuit court of appeals in *Rupert* v. *United States* (181 Fed. 87), but has not been passed upon by the Supreme Court. The Grain Futures Act contains a provision (sec. 6) making it unlawful to deliver for transmission through the mails or in interstate commerce any offer, confirmation, or price quotation relating to contracts for the sale of grain for future delivery, except under the regulated conditions required by the act. In upholding the act as a whole, the Supreme Court found it unnecessary to pass upon the validity of this provision since the parties to the suit were not affected by it (*Chicago Board of Trade* v. *Olsen*, 262 U. S. 1, 42). The similar provisions in the Securities Act of 1933 and the Securities Exchange Act of 1934 have already been noted.

The power exercised in these statutes has been described by the Supreme Court in the following terms:

"Congress can certainly regulate interstate commerce to the extent of forbidding and punishing the use of such commerce as an agency to promote immorality, dishonesty, or the spread of any evil or harm to the people of other States from the State of origin. In doing this it is merely exercising the police power, for the benefit of the public, within the field of interstate commerce" (*Brooks* v. *United States*, 267 U. S. at 436–437).

The prohibition of the use of interstate commerce contained in the present bill is precisely of this nature; it is designed to prevent the use of interstate commerce as an agency to promote the spread of the evil that results from holding companies to the purchasers of their securities, and to the consumers served by the public-utility companies which they control. That this police

power, for the benefit of the public, within the field of interstate commerce is not limited to prohibiting the transportation of articles that are themselves harmful is shown by the Brooks case from which this quotation is taken. The stolen automobile there involved was not itself different from any other automobile. The Pure Food and Drug Act has been upheld not merely in its application to harmful adulterated articles (*Hipolite Egg Co.* v. *United States*, 220 U. S. 45), but also to those which are merely misbranded (*Weeks* v. *United States*, 245 U. S. 618), and to those accompanied by circulars containing fraudulent statements, (*Seven Cases* v. *United States*, 239 U. S. 510). There is nothing harmful about the prison-made goods governed by the Hawes-Cooper Act, or the hot oil which the Connally Act seeks to control. The communications prohibited by the Grain Futures Act, the Securities Act, and the Securities Exchange Act are precisely of the same inherent character as many of those that would be affected by the present bill. The great variety of cases in which the prohibition of interstate shipment of articles has been upheld show clearly that Congress has acted upon widely differing policies in imposing these prohibitions. The inherent evil of the article itself may be one ground for imposing the prohibition; it is plainly not the only one. The evil that may reasonably be thought to result from the interstate distribution of unapproved securities, from interstate communications and negotiations looking toward the unapproved acquisition of securities, or from the use of the inherently dangerous holding-company device to conduct activities affecting an industry vital to the welfare of the entire Nation, may certainly justify the imposition of like prohibitions. The constitutional theory of the present bill is firmly inbedded in the entire course of federal legislation from the Sherman Act to the Securities Exchange Act.

The only authority limiting this police power of Congress within the field of interstate commerce is *Hammer* v. *Dagenhart* (247 U. S. 251), where the Court held invalid a prohibition against transporting in interstate commerce articles produced in factories where child labor had been employed within 30 days prior to their shipment. This statute was viewed as an attempt to regulate local conditions of manufacture, and so to invade the powers of the States. The earlier cases were distinguished on the ground that in each of them the use of interstate transportation was necessary to the accomplishment of harmful results, and that prohibition was essential to correct those results. That the authority of those earlier cases is not impaired by the decision is shown by the statement in the later Brooks case that Congress may forbid the use of interstate commerce as an agency to promote the spread of any evil or harm to the people of other States from the State of origin.

The child-labor decision is readily distinguishable from all the cases that might arise under the present bill. There is here no concern with the purely local conditions in a business like manufacturing, which can be completely regulated by the State regardless of the ultimate destination of the product. Whether one centers attention on the regulation of the sale of securities in interstate commerce or on the control of intercompany transactions conducted by means of interstate commerce, the situation is accurately described by the statement in the Brooks case as a prohibition of the use of interstate commerce as an agency promoting the spread of harm to the people of other States from the State of origin.

Regarding the sale of securities, the regulation is precisely of the type which Congress has already adopted in the Securities Act. From the standpoint of the effect of holding-company transactions on the operating companies which receive their goods and services, the bill removes an obstruction to effective State regulation in the State of destination which arises from the influx of goods, services, and information to that State from the State of origin. The resulting harm to both investors and consumers has arisen from the exercise in many States of extraordinary corporate privileges granted by a single State. Unlike the manufacturing regulated by the child labor law, the business of holding companies is neither essential nor local. A reading of the opinion of *Hammer* v. *Dagenhart* makes it plain that the controlling factor in the decision was the conviction of the Court that the grant of authority over interstate commerce was used in the act to destroy the local power always existing and carefully reserved to the States in the tenth amendment to the Constitution. There is no conceivable basis for a like view of the present bill.

Since the business of holding companies is so essentially interstate in character, there can be no question that the commerce power extends to all functions of that business. There is no basis for the contention that the conditions which it imposes upon companies engaging in interstate commerce go beyond Federal authority. Disregarding the fact that the regulatory provisions of the bill are all conditions upon the grant of a privilege which Congress may, and at a later date does in some cases withhold entirely, these regulatory provisions are nevertheless clearly sustained by numerous cases. To uphold them, one may assume, without admitting its validity, the frequent contention that the power of Congress to condition the uses of interstate commerce is limited to the imposition of conditions that are related to the regulation of commerce itself. The regulatory provisions of the bill may be viewed as relating to three subjects, which, taken together, cover every provision of the bill and every essential incident of the business of holding companies; the issue and sale of securities, intercompany transactions, and the control of facilities for the interstate transportation of gas and electricity.

The sale of securities in interstate commerce is unquestionably subject to Federal regulation. (*Hall v. Geiger-Jones Co.*, 242 U. S. 539; *Champion* v. *Ames*, 188 U. S. 321; *International Text Book Co.* v. *Pigg*, 217 U. S. 91). As already stated, the regulations imposed to protect the purchasers of these securities proceed upon the constitutional basis already adopted by Congress in enacting the Securities Act and the Stock Exchange Act. The provisions relating to the financial practices of the companies and those requiring them to keep accounts and file reports in a manner prescribed by the Commission are directly related to the maintenance of a healthy interstate market in securities. There is nothing novel about the use of regulatory measures of this kind in legislation under the commerce clause. The Interstate Commerce Act and the Communications Act are replete with similar provisions. Comparable regulations have been upheld when applied to businesses vital to the interstate transportation of commodities. (*Stafford* v. *Wallace*, 258 U. S. 495; *Chicago Board of Trade* v. *Olsen*, 262 U. S. 1; *Tagg Bros. & Moorehead* v. *United States*, 280 U. S. 420.)

There is a similar basis for the provisions relating to service, sales, and construction contracts. These transactions at the present time are conducted on an interstate scale in almost all of the prominent holding-company groups. Holding-company control of this business has created monopolistic conditions directly affecting interstate commerce in utility equipment and supplies, and in the capital goods that enter into the construction of utility plants. The elimination of conditions of this kind which affect interstate commerce has been one of the principal concerns of Federal legislation. The antitrust laws are an obvious example. Under them Congress has been sustained in prohibiting practices wholly within a single State where they affect interstate commerce. (*Swift & Co.* v. *United States*, 196 U. S. 375; *Bedford Cut Stone Co.* v. *Journeymen's Stone Cutters Association*, 274 U. S. 37.) Attempts to root out similar evils are found in the Packers and Stockyards Act sustained in *Stafford* v. *Wallace* (258 U. S. 495), and in the commodities clause of the Interstate Commerce Act, sustained in *United States* v. *Delaware & H. Co.* (213 U. S. 366).

The transportation and transmission of gas and electricity across State lines is present in almost every holding-company system of any size or importance; the vast increase in this interstate transmission is a dominating feature of recent developments in the utility field and is expected to continue at an accelerating rate in the near future. That this constitutes interstate commerce is not open to question (*Public Utilities Commission* v. *Attleboro Steam & E. Co.*, 273 U. S. 83; *Missouri* v. *Kansas Gas Co.*, 265 U. S. 298). That the control of these channels of interstate transportation is also a valid subject of congressional concern is equally clear (*Northern Securities Co.* v. *United States*, 193 U. S. 197; *New York Central Securities Corporation* v. *United States*, 287 U. S. 12).

The character of the business of holding companies from the viewpoint of the power of Congress under the commerce clause has been considered in only one case, *Federal Trade Commission* v. *Smith* (1 Fed. Supp. 247), involving the investigatory powers of the Federal Trade Commission. A subpena issued by the Commission directing the production of records of the Electric Bond & Share Co. was there upheld on the ground that the company under its service contracts regularly shipped goods in interstate commerce. However, the opinion of Judge Knox dismisses the claim that the service part of the contracts constituted interstate commerce with the statement that performance of those contracts consisted of activities which, under authoritative decisions, are not recognized as constituting interstate commerce.

The decision itself, resting on the fact that the company sold equipment in interstate commerce, would undoubtedly be followed. The dictum about the service contracts, assuming it to be correct, is of no application to the present question. The case involved an interpretation of section 6 (a) of the Federal Trade Commission Act (15 U. S. C., sec. 46 (a)), which authorizes the Commission to investigate the business of any corporation engaged in commerce. The interpretation of that act is a problem distinct from that of the scope of congressional power. Compare *Federal Trade Commission* v. *American Tobacco Co.* (264 U. S. 298). The power over the company which results from its constant use of interstate commerce for all its business had not been asserted by Congress. It by no means follows from the conclusion that the company was not engaged in commerce in performing these contracts that a statute could not be drawn to regulate the use of interstate commerce for the performance of such contracts.

Furthermore, the authoritative decisions which Judge Knox cited do not support his conclusion. They fall into two groups: Those upholding the validity of State statutes against the claim that they violated the commerce clause, and antitrust cases in which the court declared that the transaction affected was not one in interstate commerce. Neither these cases nor others of the same type afford any authority against the power which would be asserted in the present bill. Again and again the Supreme Court has declared that decisions upholding State regulations and State taxes against the claim that they burden interstate commerce afford no authority for a denial of the power of Congress over the same subject (*Addyston Pipe & Steel Co.* v. *United States*, 175 U. S. 211, 246; *Swift & Co.* v. *United States*, 196 U. S. 375, 400; *Stafford* v. *Wallace*, 258 U. S. 495, 525; *Chicago Board of Trade* v. *Olsen*, 262 U. S. 1, 33; *Binderup* v. *Pathe Exchange*, 263 U. S. 291, 311; *Minnesota* v. *Blasius*, 290 U. S. 1). Admittedly the States may validly legislate with reference to subjects that are in interstate commerce (*Hall* v. *Geiger-Jones Co.*, 242 U. S. 539). The Constitution imposes a bar to such legislation only if it constitutes a direct interference with the commerce that has been placed under the jurisdiction of the Federal Government.

Typical of the State cases generally cited against the validity of congressional action under the commerce clause are those holding that insurance contracts, even where they involve communication between the States, may validly be subjected to State regulation or taxation (*Paul* v. *Virginia*, 75 U. S. 168; *New York Life Insurance Co.* v. *Deer Lodge Co.*, 231 U. S. 495). Professor Dowling in his memorandum to the Senate committee considering the Fletcher-Rayburn bill pointed out that *Paul* v. *Virginia* was the product of a period in which uncertainty about the effect of the commerce clause on State powers and the wide-spread distrust of foreign corporations combined to produce an extreme insistence on limiting the concept of interstate commerce. (Stock Exchange Practices hearings, pt. 16, p. 7640.) Although conditions changed radically, early establishment and frequent reiteration made the rule—that insurance is not interstate commerce—a constitutional fixture. The consequence—that since there was no Federal legislation on the subject, the highly important insurance business would have been totally unregulated—was so serious that it may well have played an important part in inducing adherence to this rule in more recent years. Like all decisions upholding State power, these decisions furnish slight authority for the denial of Federal power over the subject of insurance; they certainly afford no help to those seeking to deny congressional power on other subjects.

Cases holding the antitrust laws inapplicable to certain practices are not in point for the same reason. The Supreme Court has pointed out the similarity between the question in those cases and that under State statutes (*Hopkins* v. *United States*, 171 U. S. 578, 594; *Addyston Pipe and Steel Co.* v. *United States*, 175 U. S. 211, 229, 243). In both cases the question is whether, as a result of State statute or private contract, there is a direct interference with the free flow of interstate commerce. It is necessary to draw a line at some point in order to preserve the legislative power of the States and the contractual freedom of individuals. The point at which the Court draws that line in a particular case depends, as it has so frequently said, upon a host of practical considerations, and cannot be reduced to a single general rule. By the vague terms of the antitrust laws, Congress has in effect given the Court authority to weigh those practical factors and determine the point at which the restraint on commerce becomes illegal. It by no means follows that Congress cannot itself specifically prohibit certain clearly defined uses of interstate commerce, especially when those uses are essential to the conduct of a predatory business which has consequences extending far beyond the reach of any single State.

Furthermore, assuming that the antitrust decisions are to be read as defining the limitations of congressional power, they would furnish no authority against the validity of the present bill. Those cited by Judge Knox in *Federal Trade Commission* v. *Smith, supra*, may be taken as examples. They are *Moore* v. *New York Cotton Exchange* (270 U. S. 593); *Blumenstock Bros.* v. *Curtis Publishing Co.* (262 U. S. 436); and *Federal Baseball Club* v. *National League* (259 U. S. 200). The New York Cotton Exchange case held that a monopoly in the telegraphic transmission of price quotations on an exchange did not violate the act; the Court declared that sales on the exchange were local transactions, not interstate commerce. In the Curtis Publishing Co. case the defendant was charged with a monopolistic practice in the making of advertising contracts for magazines that circulated throughout the country. The Court declared that the making of the advertising contract was not itself interstate commerce. In the Federal Baseball Club case the staging of baseball games was held to be a local business; its character was not altered by the fact that the players continuously traveled from one State to another. For each of these three cases holding the Sherman Act inapplicable there is a counterpart in a case applying the act to restraints on activities very similar to those which the Court in those cases declared not to be interstate commerce. Thus, although the Court said in the Moore case that transactions on the New York Cotton Exchange are not interstate commerce, it held, in *United States* v. *Patton* (226 U. S. 525), that an attempt to create a corner on that market did violate the act. See also *Chicago Board of Trade* v. *Olsen* (262 U. S. 1), upholding the constitutionality of direct Federal regulation of commodity exchanges.

The *Blumenstock case* may be compared with *Indiana Farmers Guide Publishing Co.* v. *Prairie Farmers Publishing Co.*, decided December 3, 1934, where the Sherman Act was held to proscribe monopolistic practices in securing advertisements in farm papers; the business was declared to include the transportation between States of electrotypes sent by advertisers to be used in setting up advertisements and the transportation of substantial quantities of the paper in interstate commerce; the Court pointed out that the opinion in the Blumenstock case "assumed that a publishing business such as that now under consideration would amount to interstate commerce." Compare also *Ramsey Co.* v. *Associated Bill Posters* (260 U. S. 501), where, despite the claim that the making of advertising contracts is not interstate commerce, a complaint charging a combination among solicitors of advertising billboards was held to state a cause of action under the Sherman Act. And the Federal Baseball Club case may be compared with *Hart* v. *Keith Vaudeville Exchange* (262 U. S. 271), where the defendants were charged with combining to exclude actors from vaudeville theaters, the bill alleging that the contracts required the performers to travel and transport scenery and costumes between the States. There a decree dismissing the bill for want of jurisdiction on the ground that it did not state a cause of action under the laws of the United States was reversed. These cases show that despite the fact that some language in the opinions seems to refer to the constitutional question, the Court's decisions do not exclude from the reach of the Federal power transactions of any type that have an effect upon interstate commerce.

The foregoing discussion of registration and its effects has been confined to the provision which makes registration and compliance with the regulations imposed upon registered companies a condition precedent to the direct performance by a holding company of certain activities in interstate commerce. The registration section also contains a prohibition against the ownership by a holding company of any security of an associate company that carries on any of those interstate activities or of a holding company or a public-utility company engaged in interstate commerce. These provisions plainly rest upon the same constitutional basis as those already discussed. The contention which may be advanced that stock ownership is not in itself interstate commerce and so may not be made the basis of Federal legislation is fully answered by the decision in *Northern Securities Co.* v. *United States* (193 U. S. 197). Mr. Justice Harlan there expressly pointed out that this argument was based upon a misstatement of the Government's contention, and that, correctly stated, the Government's position was that Congress may protect the freedom of interstate commerce by any means that are appropriate and that are lawful and not prohibited by the Constitution; and that no State corporation can stand in the way of the enforcement of the National will, legally expressed. Having authority to prescribe the conditions under which holding companies may conduct interstate activities, Congress may impose the same conditions upon companies which seek the equally special privilege of having a proprietary interest in other corporations that conduct these activities.

The registration section also requires that every holding company which has presently outstanding any securities which have been marketed by use of the mails or in interstate commerce subsequent to January 1, 1925, and which are held by persons outside of the State in which that holding company is organized, shall register under the act. Assuming the validity of the other provisions of this section, there can be no question of the power of Congress to impose a duty to register in such a case. Companies affected by this provision have already enjoyed a privilege which it is within the power of Congress to deny. They have set in motion forces which remain at work as long as their obligations are outstanding. They did so subject to later assertions of Federal power. They may not complain when that power is exercised.

As compliance with the regulations imposed by the bill is the condition upon the use of interstate commerce for the conduct of holding-company activities by those who have sought that privilege by registering with the Commission, the claim may be made that the regulations go beyond their stated purpose because many of them are directed against the subsidiary companies of registered holding companies. The point is without merit. By definition the subsidiary companies of registered holding companies are those which are controlled by such holding companies. To impose regulation upon them is merely to control the device by which the holding company puts into effect its own determinations. Regulation of the actions of companies controlled by those under the jurisdiction of Congress—those whose policies are determined completely by the registered holding company—is merely a means of applying and making effective the basis authority which the bill aserts over the registered holding company.

POWER OVER THE MAILS

Under its power to establish post offices and post roads, Congress has full authority to regulate the postal system of the country and to determine what may and what may not be carried by that system. This power is even more comprehensive than that over interstate commerce, for the Government's interest in the mails is proprietary as well as regulatory. Compare *Stephenson* v. *Binford* (287 U. S. 251). It has frequently been exercised to regulate practices which but for the use of the mails would not be subject to congressional control. Examples are to be found in the Grain Futures Act, the Securities Act, and the Securities Exchange Act, which have been noted above. Several measures in which this power was exercised have been sustained in the courts.

The Supreme Court has upheld the exclusion from the mails of information concerning lotteries (*Ex parte Jackson*, 96 U. S. 727; *Ex parte Rapier*, 143 U. S. 110); matter in furtherance of schemes to defraud (*Public Clearing House* v. *Coyne*, 194 U. S. 497); and matter considered by the Post Office Department to advocate treason or forcible resistance to the conduct of war (*Milwaukee Publishing Co.* v. *Burleson*, 255 U. S. 407). It has gone further and permitted the imposition of conditions upon the use of the mails in sustaining a statute requiring that newspapers and periodicals seeking the privilege of the second-class mail must file a statement of their ownership, editors, and circulation (*Lewis Publishing Co.* v. *Morgan*, 229 U. S. 288).

The extent of this power and its limitations were discussed by Mr. Justice Brandeis in his dissenting opinion in the Milwaukee Publishing Co. case. Although differing from the Court on a matter of statutory interpretation, his statement is not inconsistent with anything said in the majority opinion:

"The power to police the mails is an incident of the postal power. Congress may, of course, exclude from the mails matter which is dangerous or which carries on its face immoral expressions, threats, or libels. It may go further and through its power of exclusion exercise, within limits, general police power over the material which it carries, even though its regulations are quite unrelated to the business of transporting mails. As stated in *Ex Parte Jackson*, '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.' In other words, the postal power, like all its other powers, is subject to the limitations of the Bill of Rights" (255 U. S., at 430).

If it be argued that conditions imposed upon use of the mails may be only those reasonably related to regulation of the mails, and that this power may not be used to seek extraneous ends not otherwise within the power of Congress, the answer is to be found in the cases already cited. The suppression of lotteries and of business frauds are no more directly within any grant of legislative power to Congress than is control of the public utility holding company. As stated by Mr. Justice Holmes, in affirming a mail-fraud conviction:

"The overt act of putting a letter into the post office of the United States is a matter that Congress may regulate. * * * Whatever the limits to the power, it may forbid any such acts in furtherance of a scheme that it regards as contrary to public policy, whether it can forbid the scheme or not" (*Badders* v. *United States*, 240 U. S. 391, 393).

THE DUE-PROCESS CLAUSE

The provisions of the bill, whether they be viewed as regulations of interstate commerce or as exertions of the power over the mails, are, of course, subject to the restrictions of the Bill of Rights, including the due-process clause of the fifth amendment. Claims under this clause must proceed upon the assumption that liberty or property is taken by the statute without due process of law. But it is firmly established that this clause does not protect the liberty to engage in a business that the legislative authority reasonably considers inimical to the public welfare, or the property interests of those who have entered upon such a business (*Mugler* v. *Kansas*, 123 U. S. 623; *Austin* v. *Tennessee*, 179 U. S. 343; *Booth* v. *Illinois*, 184 U. S. 425; *Otis* v. *Parker*, 187 U. S. 606; *Rast* v. *Van Deman & Lewis Co.*, 240 U. S. 342, 368). Compare the assertions of the taxing power sustained in *McCray* v. *United States* (195 U. S. 27); *Alaska Fish Salting & By-Products Co.* v. *Smith* (255 U. S. 44); *Magnano Co.* v. *Hamilton* (292 U. S. 40); and *Fox.* v. *Standard Oil Co.* (decided Jan. 14, 1935).

The power to prohibit may extend beyond those businesses that are themselves harmful. It does not follow that because a transaction separately considered is innocuous it may not be included in a prohibition the scope of which is regarded as essential in the legislative judgment to accomplish a purpose within the admitted power of the Government. (*Purity Extract Co.* v. *Lynch*, 226 U. S. 192, 205. See also *Hebe Co.* v. *Shaw*, 248 U. S. 297; *Booth* v. *Illinois*, *supra*; *Otis* v. *Parker*, *supra*.) The argument against the absolute prohibition of certain forms of business based on the claim that the evils may be eliminated by the less drastic method of regulation was anticipated by Learned Hand in an article on the Commodities Clause, published shortly before its constitutionality was upheld by the Supreme Court. After stating the argument that it cannot be assumed that the carrier would violate its public duties, and that to forbid all traffic in commodities owned by the carrier is to condemn the innocent with the guilty and has no reasonable relation to the securing of the chief purpose of the act, he said:

"The answer to this reasoning is twofold: First, that the clause is designed not to punish offenders of the act in general but to remove an obvious motive of partiality in the conduct of those who exercise public duties; and, second, to obviate the difficulty of detecting actual offenders by prohibiting a kind of business in which offenses are most likely to arise" (The Commodities Clause and the Fifth Amendment, 22 Harv. L. Rev. 250, 254).

This position was later fully upheld by the Supreme Court when it sustained the validity of the clause. (*United States* v. *Delaware & H. Co.*, 213 U. S. 366; *Delaware L. & W. R. Co.* v. *United States*, 231 U. S. 363.)

In imposing regulations with which holding companies must comply, the bill applies legislative methods which have long been recognized in the public-utility field. It is no longer open to doubt that the use of such methods of regulation may be extended to new businesses as the public need becomes manifest. Congressional legislation under the commerce clause has applied rate regulation, the imposition of a duty to serve and control over accounts and records not merely upon carriers, but also upon commodity exchanges and persons performing services upon them. (*Stafford* v. *Wallace*, 258 U. S. 495; *Chicago Board of Trade* v. *Olsen*, 262 U. S. 1; *Tagg Bros. & Moorehead* v. *United States*, 280 U. S. 420). The latest expression of the Supreme Court of the United States on this subject is in *Nebbia* v. *New York* (291 U. S. 502), where Mr. Justice Roberts wrote:

"The fifth amendment, in the field of Federal activity, and the fourteenth, as respects State action, do not prohibit governmental regulation for the public welfare. They merely condition the exertion of the admitted power by securing that the end shall be accomplished by methods consistent with due process. And the guaranty of due process, as has often been held, demands only 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. It results that a regulation valid for one sort of business, or in given circumstances, may be invalid for another sort, or for the same business under other circumstances, because the reasonableness of each regulation depends upon the relevant facts" (291 U. S. at 525).

Applying this test to the business of holding companies there can be no question that the facts, as established by recent reports that are matters of public record, furnish the full justification for the complete regulation of such companies as public-utility companies.

The case for regulation of transactions between the holding company and its subsidiary companies is equally clear. These transactions are not contracts freely made at arm's length, but the decisions of the holding company itself sitting through its representatives on both sides of the table. It is firmly established that there is no constitutional right to derive profit from a contract of this kind (*Smith* v. *Illinois Bell Telephone Co.* (282 U. S. 133), *Western Distributing Co.* v. *Public Service Commission* (285 U. S. 119), *Lindheimer* v. *Illinois Bell Telephone Co.* (292 U. S. 151), *Dayton Power & Light Co.* v. *Public Utilities Commission* (292 U. S. 290)).

The States have such complete power to require that such intercompany transactions be conducted at cost that they may examine the reasonableness of a contract of sale in interstate commerce which would otherwise be entirely beyond their reach (*Western Distributing Co.* v. *Public Utilities Co.*, *supra*, compare *Missouri* v. *Kansas Natural Gas Co.*, 265 U. S. 298). Having power to eliminate profit, Congress may adopt whatever means it reasonably considers necessary to see that that end is achieved. In the light of the great difficulty, established by long experience with the regulation of utility rates, of ascertaining the actual cost and enforcing the policy of service at cost, it would not be unreasonable to require the complete abolition of intercompany transactions. It has already been noted that this measure finds full support in the decisions upholding the commodities clause (*U. S.* v. *Delaware & H. Co.*, 213 U. S. 366; *Delaware L. & W. R. Co.* v. *U. S.*, 231 U. S. 363). Certainly Congress is also free to provide that where holding companies continue the performance of services for operating companies they must employ a separately organized cooperative arrangement under which any profit accruing will be returned to the utility companies.

DELEGATION OF POWER

The bill provides for administration by the Securities and Exchange Commission and the Federal Power Commission. The provisions conferring authority upon these bodies cannot successfully be attacked upon the ground that the permissible limits of delegation have been exceeded.

The subject has been exhaustively considered in the majority and dissenting opinions of the Supreme Court in *Panama Refining Co.* v. *Ryan*, decided January 7, 1935. While differing as to the existence of a standard in the particular statute there before the Court, both opinions cite with approval previous decisions which go much further in sustaining delegations of power than is necessary to uphold the present bill, *Field* v. *Clark* (143 U. S. 649); *Union Bridge Co.* v. *United States* (204 U. S. 364); *United States* v. *Grimaud* (220 U. S. 506); *Intermountain Rate Cases* (234 U. S. 476); *Hampton & Co.* v. *United States* (276 U. S. 394); *Federal Radio Commission* v. *Nelson Bros. B. & M. Co.* (289 U. S. 266).

The majority opinion in the Panama Refining Co. case recognizes that the required standard need not be expressly included in the particular section conferring the authority, but may be gathered from a reading of the entire statute. "We examine the text to ascertain if it furnishes a declaration of policy or a standard of action, which can be deemed to relate to the subject of section 9(c) and thus to imply what is not there expressed." In the present bill, the measure as a whole with its clearly defined objectives furnishes a standard applicable to every delegation that the bill contains. In addition, each particular delegation contains a standard far more definite than that of public interest sustained in *New York Central Securities Corporation* v. *United States* (287 U. S. 12), or as public convenience, interest, or necessity requires, sustained in *Federal Radio Commission* v. *Nelson Bros. B. & M. Co.* (289 U. S. 266).

This bill finds a close analogy in the consolidation provision of the Transportation Act which was sustained in the New York Central Securities Co. case. The Court there declared, through Chief Justice Hughes:

"Appellant insists that the delegation of authority to the Commission is invalid because the stated criterion is uncertain. That criterion is the 'public interest.' It is a mistaken assumption that this is a mere general reference to public welfare without any standard to guide determination. The purpose of the act, the requirements it imposes, and the context of the provision in question show the contrary. Going forward from a policy mainly directed to the prevention of abuses, particularly those arising from excessive or discriminatory rates, Transportation Act, 1920, was designed better to assure adequacy in transportation service. This Court, in *New England Divisions Case* (261 U. S. 184, 189, 190) adverted to that purpose, which was found to be expressed in unequivocal language; 'to attain it, new rights, new obligations, new machinery were created.' The Court directed attention to various provisions having this effect, and to the criteria which the statute had established in referring to 'the transportation needs of the public', 'the necessity of enlarging transportation facilities', and the measures which would 'best promote the service in the interest of the public and the commerce of the people (Id., p. 189, note. See also *Texas & Pacific Ry Co.* v. *Gulf, Colorado & Santa Fe* Ry. Co. (279 U. S. 266, 277). The provisions now before us were among the additions made by Transportation Act, 1920, and the term 'public interest' as thus used is not a concept without ascertainable criteria, but has direct relation to adequacy of transportation service, to its essential conditions of economy and efficiency, and to appropriate provision and best use of transportation facilities, questions to which the Interstate Commerce commission has constantly addressed itself in the exercise of the

authority conferred. So far as constitutional delegation of authority is concerned, the question is not essentially different from that which is raised by provisions with respect to reasonableness of rates, to discrimination, and to the issue of certificates of public convenience and necessity (*Intermountain Rate Cases*, 234 U. S. 476, 486; *Railroad Commission* v. *Southern Pacific Co.*, 264 U. S. 331, 343, 344; *Avent* v. *United States*, 266 U. S. 127, 130; *Colorado* v. *United States*, 271 U. S. 153, 163; *Chesapeake & Ohio Ry Co.* v. *United States*, 283 U. S. 35, 42)" (287 U. S. at 24–25).

This statement is strikingly applicable to every question of delegation that can arise under the present bill, and plainly establishes its freedom from successful attack on this ground.

CONCLUSION

Enactment of the proposed public-utility holding-company bill is fully within the powers granted to Congress by the Constitution.

Mr. BARKLEY. Mr. President, as I understand, the Senator from Montana has not as yet concluded his remarks on the bill.

Mr. WHEELER. No; I have not.

Mr. BARKLEY. The Senator desires the floor when the Senate meets again?

Mr. WHEELER. Yes; I should like to have the floor at that time.

EXECUTIVE SESSION

Mr. BARKLEY. With the understanding that the Senator from Montana wishes to resume the floor at the next meeting of the Senate, 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. McKELLAR, from the Committee on Post Offices and Post Roads, reported favorably the nominations of sundry postmasters.

Mr. COPELAND, from the Committee on Commerce, reported favorably the nomination of Harry N. Pharr, of Arkansas, for appointment as a member of the Mississippi River Commission, as provided by law, vice Charles H. West, deceased.

Mr. PITTMAN, from the Committee on Foreign Relations, reported favorably the nomination of George A. Gordon, of New York, now a Foreign Service officer of class 1 and counselor of embassy at Rio de Janeiro, Brazil, to be Envoy Extraordinary and Minister Plenipotentiary of the United States to Haiti.

The PRESIDING OFFICER (Mr. MINTON in the chair). The reports will be placed on the Executive Calendar.

If there be no further reports of committees, the clerk will state the first nomination in order on the calendar.

The calendar is in order.

THE JUDICIARY

The Chief Clerk read the nomination of James H. Baldwin to be United States district judge, district of Montana.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

POSTMASTERS

The Chief Clerk proceeded to read sundry nominations of postmasters.

The PRESIDING OFFICER. Without objection, the nominations of postmasters on the calendar will be confirmed en bloc.

IN THE NAVY AND MARINE CORPS

The Chief Clerk proceeded to read sundry nominations of officers in the Navy and Marine Corps.

Mr. BARKLEY. I ask unanimous consent that the nominations in the Navy and Marine Corps be confirmed en bloc.

The PRESIDING OFFICER. Without objection, the nominations are confirmed en bloc.

That completes the calendar.

RECESS TO FRIDAY

Mr. BARKLEY. As in legislative session, I move that the Senate stand in recess until 12 o'clock noon on Friday.

The motion was agreed to; and (at 4 o'clock and 50 minutes p. m.) the Senate, in legislative session, took a recess until Friday, May 31, 1935, at 12 o'clock meridian.

CONFIRMATIONS

Executive nominations confirmed by the Senate May 29 (legislative day of May 13), 1935

UNITED STATES DISTRICT JUDGE

James H. Baldwin to be United States district judge, district of Montana.

PROMOTIONS IN THE NAVY

John M. Creighton to be commander.
Charles E. Rosendahl to be commander.
John G. Moyer to be commander.
William A. Corn to be commander.
Norman E. Millar to be lieutenant commander.
Alexander J. Couble to be lieutenant commander.
Walter H. Roberts to be lieutenant commander.
Leo B. Schulten to be lieutenant commander.
Robert E. Melling to be lieutenant commander.
Frederick B. Kauffman to be lieutenant commander.
James C. Landstreet to be lieutenant.
Sidney King to be lieutenant.
Thomas M. Brown to be lieutenant.
Claude A. Dillavou to be lieutenant.
John S. Blue to be lieutenant.
Merle Van Metre to be lieutenant.
Spencer E. Dickinson to be pay inspector.
Robert W. Clark to be pay inspector.
Lawrence A. Odlin to be pay inspector.
Ralph M. Warfield to be civil engineer.
William C. Batchelor to be chief gunner.

MARINE CORPS

Wiliam C. James to be lieutenant colonel.
Galen M. Sturgis to be major.
William W. Davidson to be captain.

POSTMASTERS

CONNECTICUT

Joseph H. Driscoll, Branford.
Irving H. Charlotte, Short Beach.
Frank P. Ablondi, Stony Creek.

MONTANA

Clarence A. Smithey, Hamilton.

NEBRASKA

Ruben C. Volz, Bloomington.
William E. McCaulley, Chappell.
Jean D. Hubbard, Ingleside.

NEW YORK

William H. McLaughlin, Little Falls.

HOUSE OF REPRESENTATIVES

WEDNESDAY, MAY 29, 1935

The House met at 12 o'clock noon.

The Chaplain, Rev. James Shera Montgomery, D. D., offered the following prayer:

O God of the living, before whose eyes all creation lies unveiled, duty is calling. Enable us to conceive of Jehovah as Immanuel, "God with us." As heralds and leaders, do Thou come from behind the cloudy mists, and with hearts and minds may we bind up wounds and not make them; quench the fires of resentment and not kindle them. We pray Thee that we may not be worldly nor greedy, incautious nor careless, but be guided by the supreme law of all the earth, which is the law of humanity. Take from us, Heavenly Father, doubts and speculations and lead us to build higher than the waves of passion can reach. Widen our sympathy, broaden our understanding, and as we serve, grant, blessed Lord, that forbidding conditions everywhere may be conquered through calm and poise. O let wisdom, unselfishness, and cooperation break through and the spirit of triumph beat in all breasts. We thank Thee that Thy love is small enough to embrace a child and great enough to encircle the universe. Through Christ. Amen.

The Journal of the proceedings of yesterday, May 28, 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 without amendment bills and a joint resolution of the House of the following titles:

H. R. 65. An act to provide for the establishment of a Coast Guard station on the coast of Virginia, at or near the north end of Hog Island, Northampton County;

H. R. 231. An act for the relief of Thomas M. Bardin;

H. R. 285—An act for the relief of Elizabeth M. Halpin;

H. R. 1291. An act for the relief of the Muncy Valley Private Hospital;

H. R. 1492. An act for the relief of Harbor Springs, Mich.;

H. R. 2015. An act for a Coast Guard station at the eastern entrance to Cape Cod Canal, Mass.;

H. R. 2689. An act for the relief of Mary Ford Conrad;

H. R. 3073. An act for the relief of William E. Smith;

H. R. 3285. An act authorizing a preliminary examination of the Oswego, Oneida, Seneca, and Clyde Rivers in Oswego, Onondaga, Oneida, Madison, Cayuga, Wayne, Seneca, Tompkins, Schuyler, Yates, and Ontario Counties, N. Y., with a view to the controlling of floods;

H. R. 4528. An act to extend the times for commencing and completing the construction of a bridge across the Mississippi River between New Orleans and Gretna, La.;

H. R. 4630. An act for the relief of William A. Ray;

H. R. 4708. An act for the relief of E. F. Droop & Sons Co.;

H. R. 5210. An act to provide funds for cooperation with school district no. 17–H, Big Horn County, Mont., for extension of public-school buildings, to be available to Indian children;

H. R. 5213. An act to provide funds for cooperation with school district no. 27, Big Horn County, Mont., for extension of public-school buildings to be available to Indian children;

H. R. 5216. An act to provide funds for cooperation with Harlem School District No. 12, Blaine County, Mont., for extension of public-school buildings and equipment to be available for Indian children;

H. R. 5547. An act to extend the times for commencing and completing the construction of a bridge across the Des Moines River at or near St. Francisville, Mo.;

H. R. 6204. An act to authorize the assignment of officers of the line of the Navy for aeronautical engineering duty only, and for other purposes;

H. R. 6315. An act to provide funds for cooperation with the school board at Medicine Lake, Mont., in construction of a public-school building, to be available to Indian children of the village of Medicine Lake, Sheridan County, Mont.;

H. R. 6372. An act to authorize the coinage of 50-cent pieces in connection with the Cabeza de Vaca Expedition and the opening of the Old Spanish Trail;

H. R. 6834. An act to revive and reenact the act entitled "An act authorizing Vernon W. O'Connor, of St. Paul, Minn., his heirs, legal representatives, and assigns, to construct, maintain, and operate a bridge across the Rainy River at or near Baudette, Minn.";

H. R. 6859. An act granting the consent of Congress to the State Highway Commission of North Carolina to construct, maintain, and operate a free highway bridge across Waccamaw River at or near Old Pireway Ferry Crossing, N. C.;

H. R. 6997. An act authorizing the State of Illinois and the State of Missouri to construct, maintain, and operate a free highway bridge across the Mississippi River between Kaskaskia Island, Ill., and St. Marys, Mo.;

H. R. 7291. An act to extend the times for commencing and completing the construction of a bridge across the Rio Grande at or near Boca Chica, Tex.;

H. R. 7874. An act to change the name of the German Orphan Asylum Association of the District of Columbia to the German Orphan Home of the District of Columbia; and

H. J. Res. 107. Joint resolution authorizing the President of the United States of America to proclaim October 11, 1935, General Pulaski's Memorial Day for the observance and commemoration of the death of Brig. Gen. Casimir Pulaski.

The message also announced that the Senate had passed, with amendments in which the concurrence of the House is requested, 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;

H. R. 4665. An act authorizing the filling of vacancies in certain judgeships; and

H. R. 7205. An act to amend the Ship Mortgage Act, 1920, otherwise known as "section 30" of the Merchant Marine Act, 1920, approved June 5, 1920, to allow the benefits of said act to be enjoyed by owners of certain vessels of the United States of less than 200 gross tons.

The message also announced that the Senate had passed bills and joint resolutions of the following titles, in which the concurrence of the House is requested;

S. 5. An act to prevent the adulteration, misbranding, and false advertising of food, drugs, devices, and cosmetics in interstate, foreign, and other commerce subject to the jurisdiction of the United States, for the purposes of safeguarding the public health, preventing deceit upon the purchasing public, and for other purposes;

S. 11. An act to amend section 389, title 18, of the United States Code, being section 239 of the United States Criminal Code;

S. 12. An act to amend the Packers and Stockyards Act;

S. 272. An act for the relief of William Frank Lipps;

S. 280. An act for the relief of Hazel B. Lowe, Tess H. Johnston, and Esther L. Teckmeyer;

S. 430. An act for the relief of Anna Hathaway;

S. 490. An act for the relief of F. T. Wade, M. L. Dearing, E. D. Wagner, and G. M. Judd;

S. 578. An act authorizing the Secretary of the Interior to permit citizens of Bear Lake County, Idaho, to obtain timber from Lincoln County, Wyo., for domestic purposes;

S. 658. An act for the relief of K. W. Boring;

S. 895. An act to carry out the findings of the Court of Claims in the case of the Atlantic Works, of Boston, Mass.;

S. 928. An act for the relief of Rene Hooge;

S. 1010. An act for the relief of Fred Edward Nordstrom;

S. 1040. An act for the relief of George W. Miller;

S. 1045. An act for the relief of A. Cyril Crilley;

S. 1046. An act for the relief of E. Jeanmonod;

S. 1052. An act for the relief of the Washington Post Co.;

S. 1064. An act for the relief of Albert Gonzales;

S. 1070. An act for the relief of William A. Thompson;

S. 1138. An act for the relief of Art Metal Construction Co. with respect to the maintenance of suit against the United States for the recovery of any income or profits taxes paid to the United States for the calendar year 1918 in excess of the amount of taxes lawfully due for such period;

S. 1326. An act for the relief of Robert A. Dunham;

S. 1577. An act for the relief of Skelton Mack McCray;

S. 1604. An act to provide for the better administration of justice in the Navy;

S. 1640. An act for the relief of Dan Meehan;

S. 1656. An act for the relief of Ward J. Lawton;

S. 1793. An act to amend the act entitled "An act authorizing the attorney general of the State of California to bring suit in the Court of Claims on behalf of the Indians of California", approved May 18, 1928 (45 Stat. L. 602);

S. 1833. An act for the relief of W. L. Horn;

S. 1929. An act to clarify the status of the National Zoological Park;

S. 1943. An act to prescribe the procedure and practice in condemnation proceedings brought by the United States of America, including acquisition of title and the taking of possession under declarations of taking;

S. 1949. An act authorizing the President to order David J. Fitzgerald before a retiring board for a hearing of his case, and upon the findings of such board determine whether he be placed on the retired list;

S. 1960. An act for the relief of the Florida National Bank & Trust Co., a national banking corporation, as successor trustee for the estate of Phillip Ullendorff, deceased;

S. 1973. An act to amend section 5 of the act entitled "An act authorizing the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes", approved March 3, 1925, to authorize the payment of a per diem in connection with naval aerial surveys and flight checking of aviation charts;

S. 1977. An act to amend the act approved February 15, 1929, entitled "An act to permit certain warrant officers to count all active service rendered under temporary appointments as warrant or commissioned officers in the Regular Navy, or as warrant or commissioned officers in the United States Naval Reserve force, for the purpose of promotion to chief warrant rank;

S. 2076. An act for the relief of Domenico Politano;

S. 2119. An act for the relief of Amos D. Carver, S. E. Turner, Clifford N. Carver, Scott Blanchard, P. B. Blanchard, James B. Parse, A. N. Blanchard, and W. A. Blanchard, and/or the widows of such of them as may be deceased;

S. 2168. An act for the relief of the Bell Telephone Co. of Pennsylvania;

S. 2230. An act to authorize the Secretary of the Navy to acquire a suitable site at Pearl Harbor, Territory of Hawaii, for a rear range light;

S. 2259. An act to amend sections 966 and 971 of chapter 22 of the act of Congress entitled "An act to establish a Code of Law for the District of Columbia", approved March 3, 1901, as amended, and for other purposes;

S. 2326. An act to authorize the Secretary of War to sell to the Eagle Pass & Piedras Negras Bridge Co. a portion of the Eagle Pass Military Reservation, Tex., and for other purposes;

S. 2361. An act to fix the compensation of registers of district land offices;

S. 2364. An act relative to the retirement of certain officers and employees;

S. 2373. An act for the relief of Harry Jarrette;

S. 2374. An act for the relief of Elliott H. Tasso and Emma Tasso;

S. 2378. An act authorizing the Secretary of the Navy to accept on behalf of the United States a bequest of certain personal property of the late Dr. Malcolm Storer, of Boston, Mass.;

S. 2393. An act for the relief of the widow of Ray Sutton;

S. 2426. An act to provide for the creation of a memorial park at Tampa, in the State of Florida, to be known as "The Spanish War Memorial Park", and for other purposes;

S. 2462. An act to provide funds for cooperation with the school board at Worley, Idaho, in the construction of a public-school building to be available to Indian children in the town of Worley and county of Kootenai, Idaho;

S. 2512. An act to acquire registration of persons engaged in influencing legislation or Government contracts and activities;

S. 2520. An act for the relief of T. D. Randall & Co.;

S. 2584. An act to amend the act entitled "An act to recognize the high public service rendered by Maj. Walter Reed and those associated with him in the discovery of the cause and means of transmission of yellow fever", approved February 28, 1929, by including therein the name of Gustaf E. Lambert;

S. 2589. An act to authorize the award of a decoration for distinguished conduct to Lewis Hazard;

S. 2591. An act for the relief of Lyman C. Drake;

S. 2608. An act to authorize an appropriation to pay non-Indian claimants whose claims have been extinguished under the act of June 7, 1924, but who have been found entitled to awards under said act as supplemented by the act of May 31, 1933;

S. 2621. An act to provide funds for cooperation with the public-school board at Devils Lake, N. Dak., in the construction, extension, and betterment of the high-school building at Devils Lake, N. Dak., to be available to Indian children;

S. 2635. An act authorizing the appropriation of funds for the payment of the award in claim of Sudden & Christenson, Inc., and others;

S. 2638. An act to amend the law governing the leasing of unallotted Indian lands for mining purposes;

S. 2642. An act to incorporate the American National Theater and Academy;

S. 2656. An act to authorize the Secretary of the Interior to grant concessions on reservoir sites and other lands in connection with Indian irrigation projects and to lease the lands in such reserves for agricultural, grazing, or other purposes;

S. 2738. An act to authorize the use of park property in the District of Columbia and its environs by the Boy Scouts of America at their national jamboree;

S. 2899. An act to provide for increasing the limit of cost for the construction and equipment of an annex to the Library of Congress;

S. J. Res. 130. Joint resolution making immediately available the appropriation for the fiscal year 1936 for the construction, repair, and maintenance of Indian-reservation roads; and

S. J. Res. 131. Joint resolution providing for the participation of the United States in the Texas Centennial Exposition and celebrations to be held in the State of Texas during the years 1935 and 1936, and authorizing the President to invite foreign countries and nations to participate therein, and for other purposes.

ORDER OF BUSINESS

Mr. TAYLOR of Colorado. Mr. Speaker, during the past 20 years the House has never been in session on Decoration Day except on three occasions, and I feel sure the House does not want to be in session tomorrow. I therefore desire to submit a unanimous-consent request.

I ask unanimous consent, Mr. Speaker, that when the House adjourns today it adjourn to meet on Friday, and when the House adjourns on Friday it adjourn to meet on Monday.

In other words, I am renewing the request I made yesterday, Mr. Speaker.

The SPEAKER. Is there objection to the request of the gentleman from Colorado?

Mr. HOFFMAN. Mr. Speaker, a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. HOFFMAN. I understood yesterday that when we adjourned we adjourned to look for that rubber stamp that the Supreme Court took away from us.

The SPEAKER. That is not a parliamentary inquiry. If the gentleman has a parliamentary inquiry he may state it.

Mr. HOFFMAN. I did.

The SPEAKER. That is not a parliamentary inquiry.

Is there objection to the request of the gentleman from Colorado?

There was no objection.

MEMORIAL DAY

Mr. LLOYD. Mr. Speaker, since the House will not be in session tomorrow, Memorial Day, and since I feel that some commemoration thereof should be had, I ask unanimous consent that I be permitted to proceed; and to revise and extend my remarks.

The SPEAKER. Is there objection to the request of the gentleman from Washington?

There was no objection.

Mr. LLOYD. Mr. Speaker, on tomorrow morning a nation will pay its tribute to the silent cities of the dead. Embraced within their confines rest the honored souls of all the ages past. The good, the wise, the just, and all the hosts whose footsteps have echoed down the corridors of time are resting there, untroubled by the petty woes and griefs that mark this vale of tears. Trail blazers and singers of the songs of life; poets and scholars; philosophers and statesmen; the fair, the gnarled by life, the old, the young, the bad, the good—all have laid themselves down to cast aside their cares or rest their crowns. Their numbered days are done and they have passed into infinity, to become brothers to the countless worlds and myriad suns where neither care nor sorrow dwell, where move the atom and the universe alike, the care of Him who peoples all abodes of time.

And some have left this vale called life, with none to mourn, and some with little reckoning, and some have washed

away the grime of life's mistakes with tears of gratitude drawn from a sorrowed, saddened world. But all are equal now. And some have lived, as men believe, in careless fashion, and some have moved with honor's garlands entwined upon their brows; but each has filled his place in life according to the plan the Master only knew, and all sleep side by side, and the greensward of eternal promise throws its mantle of oblivion over all. And who shall say that one was great, or yet another small, or one was gifted more than another one, or one was good or one was bad, unless he know the plan that rules the atom in its invisible orbit with the same fidelity it measures the course of the flaming, thundering sun that lights the firmament for the eyes of man to see? Who shall measure time or space or God by human rule, and who shall set a standard of human make to compass God's design? All men are mortal, and in God's good time each shall play his part and fade away; yet each shall be a stone, no matter of what size or shape or marred by imperfections, as men see, and each shall be a unit in the infinite temple builded by Him.

And so we pay them reverence not for the good they did nor for the beauty of their lives, nor for the acclaim men lavished on them here; for all the good and beauty, wealth, honor, and acclaim of men, are but the symbols by which each man in pride attempts to measure his own vanity. We do acclaim them now, because each one—the proud and great, the meek and lowly, all—have served the Master's hand, and each, in turn, passed on to seek the great adventure in the land called "Death", beyond whose border lies a mystery mortal man can never know.

But since we have no standard but of man to measure men, we dedicate a day to commemorate our honored dead. For those who gave their all for country's weal we come with garlands and with flags, offering in humble simplicity our small tribute to attest their greater service.

They once lived here as we. With hope and life, they struggled and they lost or won in search of happiness—the common goal of men. But all their hopes and their ambitions they laid aside when country called. For the flag they lived and suffered and some under its streaming banners died and mantled in its folds were laid away to rest. They sleep in endless silence now; but the same flag that promised them honor then holds forth the same promise to generations yet unborn.

We bring them garlands, sweet with spring's perfume and all bedewed with loving tear; but unless we bring them fulfillment of the promise of the flag they loved and served those flowers will wither and fade in solemn mockery of an unkept troth.

That flag beneath whose folds they lay promised peace and human happiness; it promised equal opportunity for all; it promised freedom for men's souls and brains; it promised freedom from the fear of poverty and want; it promised banishment of lust and greed for gold and power and rank; it promised service to the rich and poor, the high and low alike, and its covenants written in blood were made with all mankind.

Perhaps these dead await the keeping of the faith. Perhaps upon some far-off shore, beyond the cold and silvery winter noon's faint glow, beyond where the noonday sun's most far-flung ray can reach, beyond the point where human thought can pierce, they wait, and, knowing, wait, and know they died in vain.

We are the keepers of that proud flag's honor; we are the guardians of its faith. These dead are calling now that we perform the trust. No matter if the road is rough and disappointments mark the way, those hardships we expect as pioneers who blaze new trails and chart strange seas. Let doubters' lips be hushed, for history tells a tale that must bring hope to every living man. The world has moved on flying wings along the way of progress for humankind since galley slaves were chained to oars and bared their bleeding backs to a master's lash.

Our goal is the pole star of truth. Its ever present, frosty gleam beckons us on across the dread waste of unexplored worlds of human experience. At the end is justice and equal opportunity for all.

EXTENSION OF REMARKS

Mr. McFARLANE. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD and include therein an address——

Mr. SNELL. Mr. Speaker, I thought it was understood we were not to transact any business today.

The SPEAKER. The Chair is simply going to recognize Members to ask unanimous consent to extend their remarks and not to present any business.

Mr. McFARLANE. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD and to include therein an address delivered by Gen. William Mitchell in Boston on May 25.

Mr. SNELL. I object, Mr. Speaker.

SHALL THE PEOPLE RULE?

Mr. HILDEBRANDT. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD.

The SPEAKER. Is there objection?

There was no objection.

Mr. HILDEBRANDT. Mr. Speaker, every reactionary in the United States, as well as some who are not reactionaries but who have a confused view of facts, welcomed gleefully the decision of the Supreme Court declaring the N. R. A. and the Frazier-Lemke farm mortgage moratorium law unconstitutional.

Every clear-visioned advocate of social justice regarded the decision as a blow at progress, regardless of how much or how little good the N. R. A. has accomplished.

Had Thomas Jefferson been alive when these decisions were handed down he might well have said, "I told you so!" and reminded the American people of his assertions that no government should have a perpetual law or a perpetual constitution; that constitutions ought to be changed at least every 35 years; and that courts are apt to arrogate to themselves powers that do not rightfully belong to them. Jefferson would probably also have declared with vigor that the founding fathers never intended to have the Supreme Court usurp legislative powers and veto laws when it wants to. He would undoubtedly have stated that the national lawmaking body ought to be its own judge of whether the statutes it enacts are constitutional or not.

If the Supreme Court is to determine the constitutionality of laws at all—which some of our ablest thinkers insist was not dreamed of at the time of the adoption of the Constitution—it ought, at least, to have sufficient breadth of mind and reasonableness to interpret in the light of modern conditions a document drafted when monopolies, labor unions, railroads, telephones, telegraphs, automobiles, airplanes, radio, and a thousand other things of the twentieth century did not exist. The least educated farmer or factory employee or section hand in my congressional district has sense enough to know that regulations prepared in an age of oxcarts and mules are not likely to be altogether appropriate in an era of trains and flivvers and blimps. May we expect equal intelligence on the part of the Supreme Court? Evidently not.

There has been criticism from reactionary sources of our brilliant Under Secretary of Agriculture, Dr. Rexford Guy Tugwell, because he once mentioned that people have sometimes overdone matters by idolizing the Constitution. To me it seemed that this was one of his most excellent remarks. Certainly no document written by human hands is so perfect—not even the remarkably able American Constitution. The fact that it has been amended a score of times speaks for itself. The fact that so soon after its adoption the Bill of Rights, consisting of the first 10 amendments, was added is also significant. Let us not forget that Thomas Jefferson was greatly dissatisfied with the Constitution in the form in which it was first accepted, and considered the Bill of Rights fully as important as the main document.

Smith, in The Spirit of American Government, quotes these words of Woodrow Wilson, who was unquestionably an authority on history:

The document (the Constitution) had been originated and organized upon the initiative and primarily in the interest of the mercantile and wealthy classes. Originally conceived as an effort

to accommodate commercial disputes between the States, it had been urged to adoption by a minority under the concerted leadership of able men representing a ruling class.

When the Constitution was adopted, it is noteworthy that only six States adopted it without any qualifications, while the remaining seven States in approving it recommended amendments ranging from 4 proposed by South Carolina to 32 favored by New York. Only a very small minority of the citizens could vote in those days, so the Constitution was adopted by a minority vote. Wilson, in his History of the American People, says (vol. III, pp. 120, 121):

> There were probably not more than 120,000 men who had the right to vote out of all the 4,000,000 inhabitants enumerated in the First Census (1790).

Just think of the absurdity of expecting the United States of 1935, with 120,000,000 people, to be governed down to the slightest detail by a basic law drafted by a voting fraction of 120,000 people!

Considering the corporation-lawyer careers of some of the Supreme Court's members, nothing else could be expected than hostility to social justice legislation. Most of us did, however, look for a more enlightened stand on the part of the supposedly liberal jurists on the high bench. It may be fortunate that we have been disappointed in them, for it may whip us on to terminate this indefensible exercise by the Supreme Court of veto power. Tyranny, if given rope enough, will usually hang itself. The Supreme Court is no exception to this rule, even though its intentions are laudable and its members honestly and mistakenly believe they are engaged in a sacred task of preserving the Constitution.

I repeat, I am not defending the N. R. A. itself. The accusation that it has often helped big business and injured little business and that it has often made the economic struggle more severe for the farmer and worker, instead of less, is true. It is also true that it has more than once made ruthless and unscrupulous employers wince when it forced them to pay higher wages and reduce hours of labor. But it is not a question of whether the N. R. A. is 100 percent good or 100 percent bad or 50-50 or some other proportion of good and bad. Neither is it a question of whether too much power has been lodged with the President.

It is a question of exactly this: Shall Congress be permitted to enact legislation to protect the destitute, the aged, and all others who are victims of capitalistic cruelty? Shall an academic body, unreachable by the people, appointed for life, and largely schooled in an atmosphere of wealth and exclusiveness, succeed in throttling such legislation practically every time it is passed?

To this question the great mass of industrious citizens of the Republic will answer with a thundering "No!"

Neither property rights nor antique documents should ever obstruct human rights. The rights of the whole people precede the rights of any corporation complaining about regulation and any mortgage holder who wants to evict a helpless and broke farmer. The rights of the whole people also take priority over any constitution ever penned in any age or any country, even our own.

If new social justice legislation can be enacted that will not be declared unconstitutional, well and good. But the chances are that it will also be so characterized by the present Supreme Court—and must people starve while we are waiting for a change in the Court's personnel?

Perhaps temporary statutes may be drawn up that will get by this tribunal with its openly reactionary attitude.

But in the long run two permanent methods of relief seem to me the only ones:

First. Amend the Constitution sufficiently so that the Government can take any steps it finds necessary to assure every able-bodied, full-grown citizen engaged in useful labor of the comforts of life, as well as to assure the same to the disabled, sick, aged, and minors.

Second. Amend the Constitution so that henceforth the Supreme Court will never again have the power to block humanitarian enactments by branding them unconstitutional.

EXTENSION OF REMARKS

Mr. McFARLANE. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD and include therein certain excerpts not from General Mitchell.

Mr. SNELL. Mr. Speaker, I object to any excerpts, but not to the gentleman's own remarks.

The SPEAKER. Objection is heard.

SUPREME COURT DECISIONS

Mr. MONAGHAN. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD and include therein a statement that appeared in yesterday's Washington Post on the question of the Supreme Court having the right to nullify acts of Congress.

Mr. SNELL. Mr. Speaker, I object to the inclusion of any extraneous matter.

Mr. MONAGHAN. Then, Mr. Speaker, I ask unanimous consent to extend my own remarks in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from Montana?

There was no objection.

Mr. MONAGHAN. Mr. Speaker, the decision of the Supreme Court Monday which was simultaneous with my delivery of the speech criticizing Congress' laissez faire policy in permitting the Supreme Court to exercise this power of voiding acts of Congress should convince Congress all the more of the need of congressional action looking to the curbing of this extreme power.

In two very splendid articles by Raymond Clapper, appearing in the Washington Post on Tuesday, May 28, and Wednesday, May 29, under the caption "Between You and Me", Mr. Clapper points out the very thing which I have pointed out to the Congress before, namely, that such a power, if it exists, should be more in the nature of an advisory power such as that enjoyed by the attorney generals of the various States and the Attorney General of the United States, and that it should be exercised only in that manner. This is fully in line with the statement of Andrew Jackson that we should give only such weight and force as their judgment should command.

Consider the turmoil into which a nation is plunged when it must await upon the judgment of nine men, and when no finality is given to an act of Congress signed by the President of the United States. Destroy that power by legislative act and you will do more to promote human justice in industrial relationships than any single act that could be performed by the Congress. Let this power continue, if you will, only insofar as it may be responsive to the Congress, the duly elected representatives of the people.

Between the time when the law first takes effect and the time when the Supreme Court declares its decision is a period of doubt and uncertainty which shrouds business activity. In the case of the N. R. A., its activities had penetrated into the very vitals of American economic life. If this power is permitted to remain in the hands of the Supreme Court—which I hope and trust the Congress does not further allow—then two things at least should be done: The decision should be made by a more substantial number of the Court, preferably all, and action should be immediate as in the case of the President's vetoing an act of the Congress. All this leads us back to the suggestion made in my first speech to the Congress on this subject, May 8, wherein I stated that the Supreme Court should be invited in by committees to give advisory opinions, as is done in Massachusetts.

The Court in the Schechter case went further, it appears, than in any of its previous decisions in curtailing the application to business activity of the interstate-commerce clause. In so doing it rendered doubtful a great deal of legislation that might come constitutionally within the scope of that clause, even under previous decisions.

Today we are past the day of the oxcart and stagecoach. Means of communication are rapid—radio, telephone, telegraph, wireless, airplanes, fast-moving automobiles, and trains have so linked up our Nation, and it is so interconnected and interrelated that the needs of the time demand

broad rather than narrow legislation in connection with the interstate commerce clause in keeping with the progress of science and our age. The power of the Supreme Court, therefore, it can readily be seen, destroys legislation in keeping with that rapid development.

Speaking in the dicta of former days, the thought of former days, and the reasoning of former days, the Congress of the United States is by sheer expediency, even if you would not concede by any other motive, compelled in a measure to think in terms of modern ideas, advanced principles of invention and science, and interlocked necessities of a great and widely scattered, although collective, peoples. "Forward!" is the cry of America; "forward!" is the cry of the New Deal, forward is what the American people want; and forward they will get to a larger extent when the Congress of the United States exercises its power under the Constitution to curb the Supreme Court's power to void its acts.

AMERICAN PEACE AND NEUTRALITY

Mr. MAVERICK. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD by printing an excellent radio speech on the subject of neutrality, all written by myself. [Laughter.]

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. MAVERICK. Mr. Speaker, we have so many serious problems that talk seems futile, but I think the problem of war is serious enough to consider at any and all times. I have recently made speeches on the subject of neutrality by this country in case of war and have made practically the same speech over Station WMCA in New York on May 27, and on the same night before an audience of four or five thousand at Carnegie Hall in New York City; also over the Columbia Broadcasting System, Sunday, June 2, and people tell me that if my potential audience listened, that altogether some one or two million people have heard it.

And today I again deliver substantially that same talk and at least it will be a matter of record, and time will tell whether or not my statement is worth anything.

We who know war do not want it again, either for ourselves or for our children. No one wants war for their own children, so our hope in life should be not to have war at all for anyone or any nation. And it is a tremendous responsibility for the Congress of the United States.

Mr. Speaker, as the records of this House will show, I have introduced a resolution or bill on the subject of peace and neutrality in event of war; so have my friends Senators NYE and CLARK, Congressman KLOEB, and others. Mine is House Joint Resolution 259, and a full copy is included in the CONGRESSIONAL RECORD of April 24, 1935.

If this resolution is enacted, it becomes a fundamental principle of our relations with foreign nations that is intended to guide us in the future like any other law. Senators NYE and CLARK are on the Munitions Committee, you know, and in my opinion are doing the greatest work of many sessions of Congress, because they are getting information never gotten before out of the archives of the World War, and are bringing to light hundreds and hundreds of facts that the people ought to know. If the people of the United States knew then what they know now, or if they will take the trouble to learn that all wars have no real basis except selfishness and hate, then possibly we can stay out of another. If anyone wants to study the legalistic phases as well as emotional phases of our entry into the World War, I refer them to the CONGRESSIONAL RECORD of 1916 and 1917. All of this is worthy of our study so we will not repeat the same mistakes.

Mr. Speaker, I shall, therefore, with your permission, describe to you the resolution which I have introduced, and which, though differently worded from the Senators', has for its purpose the staying out of war.

The caption says that it is:

To define a national policy of peace and neutrality, to prohibit certain transactions with belligerent nations, to protect American sovereignty—

and then, with a lot of whereases, it is brought out that—

the United States should maintain its neutrality in the event of armed conflict between foreign nations. And that the United States should, prior to any such armed conflict—

That is, now—

define by law its policies in such event.

Let us discuss the history of the World War, at least in its psychological phases.

You all remember that hateful summer of 1914. I was a soldier, many of you were, also; and a very few of you were then Members of Congress. Europe had then for some years been in tension. There were all kinds of things that they called "incidents", and these incidents were the things that set off the powder kegs of Europe. Somebody killed an archduke; then, suddenly were heard the marching feet of men across Europe and the rumbling of wheels going on to the war fronts. You remember it; all that terrible tragedy of men going off and waving back, with smiles on their faces, and women kissing them on the streets; and the horror of it is now much worse than it was then, because many of us saw those same men killed on the battlefields. We should realize the falseness of the feelings we had at that time. We are 18 years older now; let us look at our emotions in calm retrospect. Let us coldly analyze ourselves and the war times.

Let us specifically consider the World War. There is no use in being sentimental about this thing, for death marches on. What happened first? About the first thing that happened was that the British got control of all the cables coming into the United States. Right from the first there was a feeling against Germany, and there were people taking sides instead of being neutral. With dozens of the best British novelists serving as war correspondents, giving free hand-outs to the American correspondents, the news that came to America was colored in favor of the Allies. Then, you remember, the Germans sank the *Lusitania*, and the bloody spiral of war whirled faster and faster.

But what were we doing in America at the same time? It is easy enough for the American people to lay it on Wall Street, but what about the people themselves? We got in the war of our own accord just as much as the Wall Street bankers got us into it, and we do not gain anything by merely saying the Wall Streeters did it, anymore than the Wall Streeters gain anything when they accuse somebody of being a Communist for using their own brains. Do not blame it on the Wall Street bankers, but go back into our own souls and our own practices at that time.

And, of course, the game of killing went on. And what were we doing all through that? Our financiers made loans to the Allies, and for the reason that Germany was blockaded and we could not sell merchandise to them. Credit was advanced lavishly, and American goods were also sold by the billions of dollars at excessive profits. German propaganda was clumsy and ineffective; the British propaganda, which was in our own language, kept getting better and better. The British blockade became perfect. So the mad dance went on. Let us remember that the loans to the Europeans were made by bankers; the Europeans never got money, but only credit for merchandise that they purchased at profits from 300 to 600 percent; the industrialists over here got their profit in cash, with which they bought more stocks and bonds, and more and more they concentrated the wealth of this Nation in a few hands. All of which is being paid for today by the ordinary people of the United States. But nothing was improved by the World War; if anything, seeds for more war were sown.

Now, why did we finally enter the World War? It was because we had not maintained neutrality from the first. How are we going to stay out of a war if one starts? The answer is: By maintaining neutrality from the very beginning and by not meddling in affairs that do not concern us. In the last war, we killed ourselves with moral pretense and made money off munitions with which the Europeans killed each other. I propose that in the next war that we drop moral pretense and likewise eliminate moneymaking from

the killing of men, whether Americans or just our fellow human beings.

Here is the policy as expressed in the resolution:

It is hereby declared to be the policy of the United States that the United States maintain peace and good will to all nations.

Of course, the pacifists will say that this will not stop a war and, of course, I promptly agree that it will not. However, our intentions shall be known to all the world and the other provisions of the law may possibly effectuate the policies of peace.

Again, to quote the law exactly. It says:

That the military and naval forces of the United States shall not be used in aid of or against any foreign nation, except to protect the United States and places subject to its territorial jurisdiction.

Get that. We only use troops at home; we do not send our boys off to get killed.

And then it says:

That no part of the military or naval forces of the United States shall be transported to or used upon the soil of any foreign nation for the purpose of engaging on behalf of or against any foreign nation in armed conflict.

This makes it plain.

Now, it seems to me that every honest American, militarist or pacifist, or whatever he is, ought to agree on neutrality. Personally, I am for national defense, and I should think that every person believing in national defense, if he really believes in defense only, should be willing to keep the soldiers at home.

Now comes a very important section, which is the fourth, and deals with the prohibition on contracts and loans. It says that the United States shall not enter into any contract with any belligerent foreign nation to furnish munitions of war, or articles declared to be contraband. Second, to make any loans or extend any credit to any belligerent foreign nations, although this section shall not apply to loans already made; which means that it will not constitute a cancelation of any existing indebtedness. And then, in section 5, it says that no court shall have jurisdiction of any such claim.

Section 6 refers to the limitations on exports and shipping. It says:

There shall not be exported from the United States or any place subject to the jurisdiction thereof, directly or indirectly, to any belligerent foreign nation or national thereof any munitions of war or any article declared to be contraband of war by such belligerent foreign nation or by any foreign nation with which such belligerent foreign nation is engaged in armed conflict.

It also provides that no military vessel or military aircraft shall navigate the waters or air space of the United States; that foreign ships shall not be permitted to fly our flag; that no vessel of American registry shall be chartered for the purposes of any foreign nation, and so on. So, after having made it so that warring nations cannot get any money, we put the kibosh on the shipping. If we had done that in the World War, and if we had not shipped anything or sold anything to the Allies, maybe we would not have gone to war.

The resolution also provides that Americans lose American protection if they enlist in foreign armies. Recruiting for foreign armies is also forbidden in another section. The reason I think this is a good provision is that a lot of boys joined various foreign armies, then came back and stirred up war hysteria. If a man wants to fight, let him fight for his own country, and at home.

Then section 8 prevents American citizens from getting passports, except under rules and regulations as the President shall prescribe. News reporters and others, whose private affairs make it necessary, can probably get passports, but it is presumed that they do so upon their own responsibility.

The last section deals with the severe penalties meted out to all who violate the law.

Again, and, of course, many people will say this will not stop a war. But the provisions certainly directly meet the situation of our recent history in the World War. I think it quite obvious, as I've said before, that if we keep out of situations that lead to war, we may stay out altogether. The war fever might not ever rise. If the contending countries know that they have no chance to get us into the war, or if they think they cannot get any help from the United States of America, they may not only abandon any effort to draw us into war, but even withhold from making war themselves.

My idea is that before there is any situation similar to the World War—before any hysteria begins to be engendered—we get the law passed at this time, and then, perhaps it will hold down war passions and hatred long enough to avert a war.

I believe that this is one of the most important subjects in the world today. I think it extremely important that the American people should develop a pacific type of mind, that is to say, a deep heart-felt desire for peace. We all believe in national defense and we should, of course, defend ourselves. It is probably true that a nation that will not defend itself will be blotted out, but talk of war sometimes leads to war.

Mr. Speaker, I have an idea that is not shared by a great many people, concerning the situation in Europe. I am frank to say that I think there is no danger of war in Europe, and I base this on the fact that all Europe is war weary; that they have already fought themselves to death; that they are sick and tired of it, and that there is not a single European that wants any war, except possibly a few munitions manufacturers.

The psychological state of Europe is of course extremely dangerous, but I am of the belief their war consciousness is based on the fact that they are afraid someone will attack them. I have no idea that Germany intends to attack France, or vice versa; or that Russia, with the largest and most efficient army in the world, desires one inch more of territory than she now owns.

We can remember when the King of Jugoslavia visited France, that he was murdered. In the days of 1914 the spark of war was ignited by the killing of an archduke, but the war-weary people of Europe did not go to war on the killing of a king, this 20 years after; and his tragic death was only viewed as unnecessary, and not the occasion for a war.

I believe that every country on the face of the earth is spending too much on preparation for war; that this money could be better expended upon building up our various nations, and for the propagation of peace. We in this country are spending far too much on the Navy, building worthless battleships. For the price of one of these battleships, as obsolete as a Chinese junk, a thousand planes could be built, but better yet for the same price, 50,000 small farm homes could be built. My hope is, and I think it a safe conclusion, that the peoples of the world will some day realize the waste of great military and naval armaments, as they now realize the horror and futility of actual war, and will stop spending this money and come to their senses. My dream is that the nations of the world will some day, by international cooperation, stop this hideous business of war.

Therefore, we as a nation should establish ourselves as a peaceful people, utterly unwilling to engage in offensive world warfare, and, as I said early in my speech, this will undoubtedly have a good effect upon the world situation. By an absolute policy of neutrality and impartiality, by abandoning the high note of hypocrisy and faking that we assumed concerning the World War, we can first establish ourselves as a country with honorable intentions and then some day we may develop ourselves toward international cooperation for peace.

ASSESSMENT WORK ON MINING CLAIMS

Mr. LEWIS of Colorado submitted the following privileged report (Rept. No. 1038) from the Committee on Rules for printing in the RECORD:

House Resolution 231

Resolved, That immediately 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

consideration of H. R. 1986, a bill to provide for the suspension of annual assessment work on mining claims held by location in the United States and Alaska. That after general debate, which shall be confined to the bill and shall continue not to exceed 1 hour to be equally divided and controlled by the Chairman and ranking minority member of the Committee on Mines and Mining, 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 same to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit, with or without instructions.

WATER USERS ON IRRIGATION PROJECTS

Mr. LEWIS of Colorado submitted the following privileged report (Rept. No. 1039) from the Committee on Rules for printing in the RECORD:

House Resolution 232

Resolved, That immediately 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 S. 1305, an act to further extend relief to water users on United States reclamation projects and on Indian irrigation projects. That after general debate, which shall be confined to the bill and shall continue not to exceed 1 hour, to be equally divided and controlled by the Chairman and ranking minority member of the Committee on Irrigation and Reclamation, the bill shall be read for amendment under the 5-minute rule. At the conclusion of the reading of the bill for amendments the Committee shall rise and report the same to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit, with or without instructions.

EXTENSION OF REMARKS

Mr. MARCANTONIO. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD and include therein a joint statement issued by four Members of the House this morning, to wit, Hon. GEORGE J. SCHNEIDER, of Wisconsin; Hon. ERNEST LUNDEEN, of Minnesota; Hon. THOMAS R. AMLIE, of Wisconsin; and myself, of New York.

Mr. DUFFEY of Ohio. I object, Mr. Speaker.

ORDER OF BUSINESS

Mr. SNELL. Mr. Speaker, as I understand the situation, it is understood there is no business to come before the House on Friday?

The SPEAKER. Of course, that is a matter for the House to determine, but that is the understanding of the Chair.

Mr. TAYLOR of Colorado. My understanding is, Mr. Speaker, there will be no business transacted this week.

SENATE ENROLLED BILL AND JOINT RESOLUTION SIGNED

The SPEAKER announced his signature to an enrolled bill and an enrolled joint resolution of the Senate of the following titles:

S. 1023. An act to provide for the payment of a military instructor for the high-school cadets of Washington, D. C.; and

S. J. Res. 88. Joint resolution to abolish the Puerto Rican Hurricane Relief Commission and transfer its functions to the Secretary of the Interior.

ADJOURNMENT

Mr. TAYLOR of Colorado. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 12 o'clock and 14 minutes p. m.) the House adjourned to meet, in accordance with its previous order, on Friday, May 31, 1935, at 12 o'clock noon.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII,

Mr. STACK: Committee on Public Buildings and Grounds. H. R. 5920. A bill to authorize the conveyance of certain Government land to the borough of Stroudsburg, Monroe County, Pa., for street purposes and as a part of the approach to the Stroudsburg viaduct on State Highway Route No. 498; with amendment (Rept. No. 1037). Referred to the Committee of the Whole House on the state of the Union.

Mr. LEWIS of Colorado: Committee on Rules. House Resolution 231. A resolution for the consideration of H. R. 1986; without amendment (Rept. No. 1038). Referred to the House Calendar.

Mr. LEWIS of Colorado: Committee on Rules. House Resolution 232. A resolution for the consideration of S. 1305; without amendment (Rept. No. 1039). Referred to the House Calendar.

Mr. TOLAN: Committee on Public Buildings and Grounds. H. R. 6645. A bill to amend the act entitled "An act to provide for the construction of certain public buildings, and for other purposes", approved May 25, 1926; with amendment (Rept. No. 1040). Referred to the Committee of the Whole House on the state of the Union.

Mr. WEST: Committee on Flood Control. S. 1470. An act to provide a preliminary examination of Spokane River and its tributaries in the State of Idaho, with a view to the control of their floods; without amendment (Rept. No. 1041). Referred to the Committee of the Whole House on the state of the Union.

Mr. RAYBURN: Committee on Interstate and Foreign Commerce. H. R. 6988. A bill authorizing the State of Louisiana and the State of Texas to construct, maintain, and operate a free highway bridge across the Sabine River at or near a point where Louisiana Highway No. 21 meets Texas Highway No. 45; without amendment (Rept. No. 1042). Referred to the House Calendar.

Mr. RAYBURN: Committee on Interstate and Foreign Commerce. H. R. 7044. A bill authorizing the State of Louisiana and the State of Texas to construct, maintain, and operate a free highway bridge across the Sabine River at or near a point where Louisiana Highway No. 6 in Sabine Parish, La., meets Texas Highway No. 21 in Sabine County, Tex.; without amendment (Rept. No. 1043). Referred to the House Calendar.

Mr. WOLFENDEN: Committee on Interstate and Foreign Commerce. H. R. 7346. A bill authorizing the Delaware River Joint Toll Bridge Commission of the State of Pennsylvania and the State of New Jersey to construct, maintain, and operate a toll bridge across the Delaware River at a point between Easton, Pa., and Phillipsburg, N. J.; without amendment (Rept. No. 1044). Referred to the House Calendar.

Mr. COLE of Maryland: Committee on Interstate and Foreign Commerce. H. R. 7395. A bill authorizing M. R. Carpenter, his heirs, legal representatives, and assigns, to construct, maintain, and operate a bridge across the Potomac River between Old Town, Md., and Green Spring, W. Va.; without amendment (Rept. No. 1045). Referred to the House Calendar.

Mr. WOLFENDEN: Committee on Interstate and Foreign Commerce. H. R. 7591. A bill granting the consent of Congress to the cities of Donora and Monessen, Pa., municipal corporations, to construct, maintain, and operate a bridge across the Monongahela River between the two cities; without amendment (Rept. No. 1046). Referred to the House Calendar.

Mr. CROSSER of Ohio: Committee on Interstate and Foreign Commerce. H. R. 7807. A bill authorizing the Brookewell Bridge Co., its successors and assigns, to construct, maintain, and operate a bridge across the Ohio River at or near Wellsburg, W. Va.; without amendment (Rept. No. 1047). Referred to the House Calendar.

Mr. CHAPMAN: Committee on Interstate and Foreign Commerce. H. R. 7575. A bill to legalize a bridge across Black River on United States Highway No. 60 in the town of Poplar Bluff, Butler County, Mo.; without amendment (Rept. No. 1048). Referred to the House Calendar.

Mr. CROSSER of Ohio: Committee on Interstate and Foreign Commerce. H. R. 7592. A bill to extend the times for commencing and completing the construction of a bridge across the Ohio River at Sistersville, W. Va.; without amendment (Rept. No. 1049). Referred to the House Calendar.

Mr. O'BRIEN: Committee on Interstate and Foreign Commerce. H. R. 7620. A bill to extend the times for commencing and completing the construction of a bridge across

the Misissippi River at or near a point between Morgan and Wash Streets in the city of St. Louis, Mo., and a point opposite thereto in the city of East St. Louis, Ill.; without amendment (Rept. No. 1050). Referred to the House Calendar.

Mr. KELLY: Committee on Interstate and Foreign Commerce. H. R. 7780. A bill to extend the times for commencing and completing the construction of a bridge across the Mississippi River at or near New Boston, Ill.; without amendment (Rept. No. 1051). Referred to the House Calendar.

Mr. EICHER: Committee on Interstate and Foreign Commerce. H. R. 7809. A bill to extend the times for commencing and completing the construction of certain bridges across the Red River, between Moorhead, Minn., and Fargo, N. Dak.; without amendment (Rept. No. 1052). Referred to the House Calendar.

Mr. EICHER: Committee on Interstate and Foreign Commerce. S. 1988. An act to extend the time for the construction of a bridge across the Missouri River at or near Rulo, Nebr.; without amendment (Rept. No. 1053). Referred to the House Calendar.

REPORTS OF COMMITTEES ON PRIVATE BILLS AND RESOLUTIONS

Under clause 2 of rule XIII,

Mr. MAY: Committee on Military Affairs. H. R. 839. A bill for the relief of Frederick Leininger; without amendment (Rept. No. 1036). 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. BLAND: A bill (H. R. 8266) to amend section 981 of title 4 and section 843 of title 6 of the Canal Zone Code; to the Committee on Merchant Marine and Fisheries.

Also, a bill (H. R. 8267) to authorize the erection of a suitable memorial to Maj. Gen. George W. Goethals within the Canal Zone; to the Committee on Merchant Marine and Fisheries.

By Mr. DALY: A bill (H. R. 8268) to provide for the establishment of the Carpenters' Hall National Monument; to the Committee on the Public Lands.

By Mr. KELLER: A bill (H. R. 8269) to provide for increasing the limit of cost for the construction and equipment of an annex to the Library of Congress; to the Committee on the Library.

By Mr. KING: A bill (H. R. 8270) to enable the Legislature of the Territory of Hawaii to authorize the issuance of certain bonds, and for other purposes; to the Committee on the Territories.

By Mr. LUCKEY: A bill (H. R. 8271) to amend the act entitled "An act to insure adequate supplies of timber and other forest products for the people of the United States, to promote the full use for timber growing and other purposes of forest lands in the United States, including farm wood lots and those abandoned areas not suitable for agricultural production, and to secure the correlation and the most economical conduct of forest research in the Department of Agriculture, through research in reforestation, timber growing, protection, utilization, forest economics, and related subjects, and for other purposes", approved May 22, 1928; to the Committee on Agriculture.

By Mr. EKWALL: A bill (H. R. 8272) to provide for the use of the U. S. S. *Oregon* as a memorial to the men and women who served the United States in the War with Spain; to the Committee on Naval Affairs.

By Mr. LEWIS of Colorado: Resolution (H. Res. 231) for the consideration of H. R. 1986; to the Committee on Rules.

Also, resolution (H. Res. 232) for the consideration of S. 1305; to the Committee on Rules.

By Mr. KEE: Resolution (H. Res. 233) directing the special House committee, appointed under House Resolution 203, to investigate the National Old Age Pension Forum, J. E. Pope, Dr. J. E. Pope, and others; to the Committee on Rules.

By Mr. FISH: Joint resolution (H. J. Res. 303) to pay the adjusted-service certificates as a relief measure; to the Committee on Appropriations.

By Mr. BLAND: Concurrent resolution (H. Con. Res. 23) directing the Federal Trade Commission to investigate and report to the Senate and to the House of Representatives the cause or causes for the high prices of bunker fuel oil to the American-flag vessels and the manner in which such prices are made; to the Committee on Interstate and Foreign Commerce.

By Mr. LAMBETH: Concurrent resolution (H. Con. Res. 24) relative to disposition of certain publications; to the Committee on Printing.

MEMORIALS

Under clause 3 of rule XXII, memorials were presented and referred as follows:

By the SPEAKER: Memorial of the State of Nebraska, memorializing to make a complete investigation of the sugar-beet industry; to the Committee on Agriculture.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. GRAY of Indiana: A bill (H. R. 8273) granting a pension to Minnie E. Brooks; to the Committee on Invalid Pensions.

By Mr. GRISWOLD: A bill (H. R. 8274) for the relief of Bertha M. Harris; to the Committee on Claims.

By Mr. LARRABEE: A bill (H. R. 8275) granting an increase of pension to Charles Bess; to the Committee on Pensions.

Also, a bill (H. R. 8276) granting a pension to Nellie M. Taylor; to the Committee on Invalid Pensions.

By Mr. LUDLOW: A bill (H. R. 8277) granting an increase of pension to Mary E. Pierce; to the Committee on Invalid Pensions.

By Mr. MOTT: A bill (H. R. 8278) for the relief of Earl Elmer Gallatin; to the Committee on Naval Affairs.

PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

8650. By Mr. DORSEY: Petition of employees of the John Blood & Co., Inc., Philadelphia, Pa., registering their opposition to the Wagner labor-disputes bill; to the Committee on Labor.

8651. By Mr. KEE: Petition of L. D. Feuchtenberger and other citizens of Bluefield, W. Va., urging the Congress of the United States of America to eliminate the taxation of by the Federal Government; to the Committee on Ways and Means.

8652. By Mr. McLAUGHLIN: Petition memorializing the Congress of the United States to make a complete investigation of the sugar-beet industry; to the Committee on Agriculture.

8653. By Mr. PFEIFER: Petition of the Central Trades and Labor Council of Greater New York and vicinity, concerning the Wagner labor-disputes bill and extension of the National Recovery Act; to the Committee on Labor.

8654. By Mr. TRUAX: Petition of the Council of the City of Cleveland, Ohio, by their clerk, F. W. Thomas, urging adoption of the Costigan-Wagner antilynching law, as many citizens of the United States in various parts of the country have been lynched during the last few years, which shows an increase over previous years, causing public expression of condemnation by the people throughout the country; to the Committee on the Judiciary.

8655. Also, petition of Middlebury Council, No. 364, Jr. O. U. A. M., by their recording secretary, C. W. McDevitt, Akron, Ohio, urging support of House bills 5921, 6367, 7079, and 7223; to the Committee on Immigration and Naturalization.

8656. Also, petition of Western Council of the Dress Manufacturing Industry, representing approximately 500 manufacturing plants and employing tens of thousands of workers throughout the United States, by their chairman, Sam L. Haas, Cleveland, Ohio, urging continuance of the National Industrial Recovery Act for a sufficient period to give business certainty, and that said continuance be in such form that effective and speedy compliance may be had with codes adopted thereunder; to the Committee on Labor.

8657. Also, petition of the Ohio State Federation of Labor, Columbus, Ohio, by their secretary, Thomas J. Donnelly, urging support of the Wagner labor-disputes bill; to the Committee on Labor.

8658. Also, petition of Branch No. 100, National Association of Letter Carriers, Toledo, Ohio, by their secretary, V. M. Hoeffel, urging support of House bill 7688, introduced by Congressman MEAD, providing for the appointment and promotion of substitute postal employees, and also urging support of House bill 6990, which provides for a 40-hour week for all postal employees; to the Committee on the Post Office and Post Roads.

8659. By the SPEAKER: Petition of the Graphic Arts Association, Houston-Galveston region, protesting against rescinding order 7028 of the Post Office Department; to the Committee on the Post Office and Post Roads.

SENATE

FRIDAY, MAY 31, 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. MCKELLAR, and by unanimous consent, the reading of the Journal of the proceedings of the calendar day Wednesday, May 29, 1935, was dispensed with, and the Journal was approved.

CALL OF THE ROLL

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

The VICE PRESIDENT. The clerk will call the roll.

The Chief Clerk called the roll, and the following Senators answered to their names:

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

Mr. BARKLEY. I announce that the Senator from North Carolina [Mr. BAILEY], the Senator from Pennsylvania [Mr. GUFFEY], the Senator from Louisiana [Mr. LONG], the Senator from Nevada [Mr. MCCARRAN], the Senator from New Jersey [Mr. MOORE], the Senator from Montana [Mr. MURRAY], the Senator from Illinois [Mr. LEWIS], and the Senator from Mississippi [Mr. BILBO] are unavoidably absent from the Senate.

Mr. AUSTIN. I announce that my colleague the junior Senator from Vermont [Mr. GIBSON] and the Senator from Rhode Island [Mr. METCALF] are necessarily absent, and that the Senator from Pennsylvania [Mr. DAVIS] is absent on account of illness.

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

TRIBUTE TO THE LATE SENATOR CUTTING

The VICE PRESIDENT laid before the Senate resolutions of Local Union No. 271, International Association of Machinists, of Birmingham, Ala., adopted as a tribute to the memory of the late Senator Bronson Cutting, of New Mexico, particularly in appreciation of his activities as a friend and champion of labor, which were ordered to lie on the table.

RIVERS AND HARBOR APPROPRIATIONS—NOTICE

Mr. COPELAND. Mr. President, may I ask Senators who are interested in the river and harbor bill to be good enough to have their amendments ready by the first of next week? The Committee on Commerce has been having hearings for 2 or 3 weeks and has been working to get the bill in shape to be reported to the Senate. Some Senators have suggested to me that they desire to recommend changes in the bill and have amendments to offer to it. We should like very much, if I may make the suggestion, to have such amendments before us by Monday next.

Mr. MCKELLAR. May we file them with the Senator who is the chairman of the committee or with the clerk of the committee? How will they get before the committee?

Mr. COPELAND. They may be filed with the clerk of the Committee on Commerce.

CLAIMS OF CALIFORNIA INDIANS—RECONSIDERATION OF BILL

Mr. KING. Mr. President, on Tuesday last the Senate passed the bill (S. 1793) to amend the act entitled "An act to authorize the attorney general of the State of California to bring suit in the Court of Claims on behalf of the Indians of California", approved May 18, 1928 (45 Stat. L. 6502).

I desire to enter a motion to reconsider the vote by which the bill was passed, and I move that the House of Representatives be requested to return the bill to the Senate.

The VICE PRESIDENT. The motion of the Senator from Utah to reconsider the bill will be entered, and, without objection, the motion requesting the House to return the bill will be agreed to.

PUERTO RICAN SUGAR PRODUCERS

The VICE PRESIDENT laid before the Senate a letter from the Secretary of Agriculture, reporting, pursuant to Senate Resolution 105 (submitted by Mr. VANDENBERG, and agreed to on Apr. 9, 1935), in relation to Puerto Rican sugar activities and producers, which, with the accompanying papers, was referred to the Committee on Agriculture and Forestry.

PETITIONS AND MEMORIALS

The VICE PRESIDENT laid before the Senate the following joint resolution of the Legislature of the State of Wisconsin, which was referred to the Committee on Interstate Commerce:

Joint resolution

Memorializing the Congress of the United States to eliminate the long- and short-haul clause from the fourth section of the Interstate Commerce Act

Whereas the long- and short-haul clause of the fourth section of the Interstate Commerce Act prohibits railroads from making a lesser charge for a longer than for a shorter distance over the same line in the same direction unless authorized to do so by the Interstate Commerce Commission; and

Whereas the higher rail rates from Wisconsin and other States in the Middle West to the Pacific coast than water rates from the Atlantic seaboard to the Pacific coast through the Panama Canal have resulted in Middle West manufacturers losing all or a substantial part of their markets on the Pacific coast to the advantage of their competitors located in the East; and

Whereas the elimination of the long- and short-haul clause from the fourth section of the Interstate Commerce Act would allow the railroads to establish reduced rates from the Middle West to the Pacific coast to meet this water competition without depressing below a reasonable level their rail rates to points inland from the Pacific coast where such water competition does not exist; and

Whereas such a readjustment of rail rates will enable Middle West manufacturers to regain a substantial part of their Pacific coast business, will result in increased employment in Middle West industries, will give added employment to labor in transporting such added rail traffic to the Pacific coast and will enable the railroads to earn some additional net revenue to the advantage of farmers and residents generally of the Middle West and West who must employ the railroads to transport their prod-