


January 1, 2023

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Published Opinion

Following up our conversation, I have not had time to make a complete or satisfactory investigation of the important and interesting question presented by you, but we agree that the Bill to which you referred will become a law today "unless the Congress by their Adjournment prevent its Return," as provided in the Constitution.

The question then is whether a three-day recess by the Senate, with the House continuing in session, constitutes an adjournment by the Congress. Manifestly such a recess for three days constitutes a temporary adjournment by the Senate, but I doubt if an adjournment of the Congress thereby results.

The *Pocket Veto Case* clearly states that "the determinative question in reference to an 'adjournment' is not whether it is a final adjournment of Congress or an interim adjournment, such as an adjournment of the first session, but whether it is one that 'prevents' the President from returning the bill to the House in which it originated within the time allowed," [279 U.S. 655, 680](#)  (1929), but it must be observed that there was in that case an actual adjournment of both Houses, and therefore of the Congress, which is not the situation before us now.