STATEHOOD BILL VETOED BY TAFT

Joint Resolution Returned to Congress Condemned.

AGAINST JUDGES' RECALL.

President Points Out That He Would Be Responsible For Arizona Constitution if He Signed Measure—Opposes Hasty Legislation Even at Direction of Majority.

Washington, Aug. 16.—Following is the president's special veto message on the statehood bill:

To the House of Representatives:

I return herewith, without my approval, house joint resolution 14, "to admit the territories of New Mexico and Arizona as states into the Union on an equal footing with the original states."

Congress, by an enabling act approved June 20, 1910, provided for the calling of a constitutional convention in each of these territories, the submission of the constitution proposed by the convention to the electors of the territory, the approval of the constitution by the president and congress, the proclamation of the fact by the president and the election of state officers. Both in Arizona and in New Mexico conventions have been held, constitutions adopted and ratified by the people and submitted to the president and congress. I have approved the constitution of New Mexico, and so did the house of representatives of the Sixty-first congress. The senate, however, failed to take action upon it.

I have not approved the Arizona constitution, nor have the two houses of congress, except as they have done so by the joint resolution under consideration. The resolution admits both territories to statehood with their constitutions on condition that at the time of the election of state officers New Mexico shall submit to its electors an amendment to its new constitution altering and modifying its provision for future amendments and on the further condition that Arizona shall submit to its electors at the time of the election of its state officers a proposed amendment to its constitution by which judiciary officers shall be excepted from the section permitting a recall of all elective officers.

If I sign this joint resolution I do not see how I can escape responsibility for the judicial recall of the Arizona constitution. The joint resolution admits Arizona with the judicial recall, but requires the submission of the question of its wisdom to the voter. In other words, the resolution approves the admission of Arizona with the judicial recall unless the voters themselves repudiate it. Under the Arizona constitution all elective officers, and this includes county and state judges, six months after their election are subject to recall. It is initiated by a petition signed by electors equal to 25 per cent of the total number of votes cast for all the candidates for the office at the previous general election. Within five days after the petition is filed the officer may resign. Whether he does or not, an election ensues in which his name, if he does not resign, is placed on the ballot with that of all other candidates. The petitioners may print on the official ballot 200 words showing their reasons for recalling the officer, and he is permitted to make defense in the same place in 200 words. If the incumbent receives the highest number of the votes he continues in his office; if not, he is removed from office and is succeeded by the candidate who does receive the highest number.

This provision of the Arizona constitution in its application to county and state judges seems to me so pernicious in its effect, so destructive of independency in the judiciary, so likely to subject the rights of the individual to the possible tyranny of a popular majority and therefore to be so injurious to the cause of free government, that I must disapprove a constitution containing it.

I am not now engaged in performing the office given me in the enabling act already referred to approved on June 20, 1910, which was that of approving the constitutions ratified by the peoples of the territories. It may be argued from the text of that act that in giving or withholding the approval under the act my only duty is to examine the proposed constitution and, if I find nothing in it inconsistent with the federal constitution, the principles of the Declaration of Independence or the enabling act, to register my approval.

But now I am discharging my constitutional function in respect to the enactment of the laws, and my discretion is equal to that of the house of congress. I must therefore withhold my approval from this resolution, if in fact I do not approve it as a matter of governmental policy. Of course a mere difference of opinion as to the wisdom of details in a state constitution ought not to lead me to set up my opinion against that of the people of the territory. It is to be their government, and, while the power of congress to withhold or grant statehood is absolute, the people about to constitute a state should generally know better the kind of government and constitution suited to their needs than congress or the executive. But when such a constitution contains something so destructive of free government as the judicial recall it should be disapproved.

A government is for the benefit of all the people. We believe that this benefit is best accomplished by popular government because in the long run each class of individuals is apt to secure better provision for themselves through their own voice in government than through the altruistic interests of others, however intelligent or philanthropic. The wisdom of ages has taught that no government can exist except in accordance with laws and unless ten people under it either obey the laws voluntarily or are made to obey them. In a popular government the laws are made by the people—not by all the people, but by those supposed and declared to be competent for the purpose, as males over twenty-one years of age, and not by all of these, but by a majority of them only.

Now, as the government is for all the people and is not solely for a majority of them, the majority in exercising control either directly or through its agents is bound to exercise the power for the benefit of the minority as well as the majority. But all have recognized that the majority of a people unrestrained by law when aroused and without the sobering effect of deliberation and discussion, may do injustice to the minority, or to the individual when the selfish interest of the majority prompts. Hence Arizona's necessity for a constitution by which the will of the majority shall be permitted to guide the course of the government only under controlling checks that experience has shown to be necessary to secure for the majority its share of the benefit to the whole people that a popular government is established to bestow.

A popular government is not a government of a majority, by a majority, for a majority of the people. It is a government of the whole people, by a majority of the whole people under such rules and checks as will secure a wise, just and beneficent government of all the people. It is said you can always trust the people to do justice If that means all the people and they all agree, you can. But ordinarily they do not all agree, and the maxim is interpreted to mean that you can always trust a majority of the people This is not invariably true, and every limitation imposed by the people upon the power of the majority in their constitutions is an admission that it is not always true

No honest, clear headed man, however great a lover of popular government, can deny that the unbridled expression of the majority of a community converted hastily into law or action would some time make a government tyrannical and cruel. Constitutions are checks upon hasty action of the majority. They are the self imposed restraints of a whole people upon a majority of them to secure sober action and a respect for the rights of the minority and of the individual in his relation to other individuals and in his relation to the whole people in their character as a state or government.

The constitution distributes the functions of government into three branches—the legislative, to make the laws; the executive to execute them, and the judicial, to decided in cases arising before it the rights of the individual as between him and others and as between him and the government. This division of government into three separate branches has always been regarded as a great security for the maintenance of free institutions and the security is only firm and assured when the judicial branch is independent and impartial. The executive and legislative branches are representative of the majority of the people which elected them in guiding the course of the government within the limits of the constitution. They must act for the whole people of course, but they may properly follow and usually ought to follow the views of the majority which elected them in respect to the governmental policy best adapted to secure the welfare of the whole people. But the judicial branch of the government is not representative of a majority of the people in any such sense, even if the mode of selecting judges is by popular election.

In a proper sense judges are servants of the people—that is, they are doing work which must be done for the government and in the interest of all the people, but it is not work in which the doing of they are to follow the will of the majority except as that is embodied in statutes lawfully enacted according to constitutional limitations. They are not popular representatives. On the contrary, to fill their office properly they must be independent. They must decide every question which comes before them according to law and justice. If this question is between individuals they will follow the statute or the unwritten law if no statute applies, and they take the unwritten law growing out of tradition and custom from previous judicial decisions. If a statute or ordinance affecting a cause before them is not lawfully enacted because it violates the constitution adopted by the people, then they must ignore the statute and decide the question as if the statute had never been passed.

This power is a judicial power imposed by the people on the judges by the written constitution. In early days some argued that the obligations of the constitution operated directly on the conscience of the legislature and only in that manner and that it was to be conclusively presumed that whatever was done by the legislature was constitutional. But such a view did not obtain without hard headed, courageous and farsighted statesmen and judges, and it was soon settled that it was the duty of judges in cases properly arising before them to apply the law and so to declare what was the law and that if what purported to be statutory law was at variance with the fundamental law—i. e., the constitution—the seeming statute was not law at all, was not binding on the courts, the individuals or any branch of the government and that it was the duty of the judges so to decide. This power conferred on the judiciary in our form of government is unique in the history of governments, and its operation has attracted and deserved the admiration and commendation of the world. It gives to our judiciary a position higher, stronger and more responsible than that of the judiciary of any other country and more effectively secures an adherence to the fundamental will of the people.

What I have said has been to little purpose if it has not shown that judges to fulfill their functions properly in our popular government must be more independent than in any other form of government and that need of independence is greatest where the individual is one litigant and the state, guided by the successful and governing majority, is the other. In order to maintain the rights of the minority and the individual and to preserve our constitutional balances we must have judges with courage to decide against the majority when justice and law require.

By the recall in the Arizona constitution it is proposed to give the majority power to remove arbitrarily and without delay any judge who may have the courage to render an unpopular decision. By the recall it is proposed to enable a minority of 25 per cent of the voters of the district or state for no prescribed cause after the judge has been in office six months to submit the question of his retention in office to the electorate.

The petitioning minority must say on the ballot what they can against him in 200 words, and he must defend himself as best he can in the same space. Other candidates are permitted to present themselves and have their names printed on the ballot so that the recall is not based solely on the record or the acts of the judge, but also on the question whether some other and more popular candidate has been found to unseat him.

Could there be a system more ingeniously devised to subject judges to momentary gusts of popular passion than this? We cannot be blind to the fact that often an intelligent and respectable electorate may be so roused upon an issue that it will visit with condemnation a just judge, though exactly in accord with the law governing the case, merely because it affects unfavorably their contest. Controversies over elections, labor troubles, racial or religious issues, issues as to the construction or constitutionality of liquor laws, criminal trials of popular or unpopular defendants, the removal of county seats, suits by individuals to maintain their constitutional rights in obstruction of some popular improvement—these and many other cases could be cited in which a majority of a district electorate would be tempted by hasty anger to recall a conscientious judge if the opportunity were open all the time.

No period of delay is interposed for the abatement of popular feeling. The recall is devised to encourage quick action, and to lead the people to strike while the iron is hot. The judge is treated as the instrument and servant of a majority of the people and subject to their momentary will, not for a long period in which his qualities as a judge and his character as a man have been subjected to a test of all the varieties of judicial work and duty so as to furnish a proper means of measuring his fitness for continuance in another term. On the instant of an unpopular ruling, while the spirit of protest has not had time to cool, and even while an appeal may be pending from his ruling in which he may be sustained, he is to be haled before the electorate as a tribunal with no judicial hearing, evidence or defense and thrown out of office and disgraced for life because he has failed in a single decision, it may be, to satisfy the popular demand.

Think of the opportunity such a system would give to unscrupulous political bosses in control as they have been in control not only of conventions, but elections. Think of the enormous power for evil given to the sensational, muckraking portion of the press in rousing prejudice against a just judge by false charges and insinuation, the effect of which in the short period of an election by recall, it would be impossible for him to meet and offset.

Supporters of such a system seem to think that it will work only in the interest of the poor, the humble, the weak and oppressed; it will strike down only the judge who is supposed to favor corporations and be affected by the corrupting influence of the rich. Nothing could be further from the ultimate result. The motive it would offer to unscrupulous combinations to seek to control politics in order to control the judges is clear.

Those would profit by the recall who have the best opportunity of rousing the majority of the people to action on a sudden impulse. Are they likely to be the wisest or best people in a community. Do they not include those who have money enough to employ the firebrands and slanderers in a community and the stirrers up of social hate? Would not self respecting men well hesitate to accept judicial office with such a sword of Damocles hanging over them? What kind of judgments might those on the unpopular side expect from courts whose judges must make their decisions under such legalized terrorism? The character of the judges would deteriorate to that of trimmers and timeservers, and independent judicial action would be a thing of the past. As the possibilities of such a system pass in review is it too much to characterize it as one which will destroy the judiciary, its standing and its usefulness?

The argument has been made to justify the judicial recall that it is only carrying out the principle of the election of the judges by the people. The appointment by the executive is by the representative of the majority, and so far as future bias is concerned there is no great difference between the appointment and the election of judges. The independence of the judiciary is secured rather by a fixed term and fixed and irreducible salary. It is true that when the term of judges is for a limited number of years and re-election is necessary it has been thought and charged sometimes that shortly before election in cases in which popular interest is excited judges have leaned in their decisions toward the popular side.

As already pointed out, however, in the election of judges for a long and fixed term of years the fear of popular prejudice as a motive for unjust decisions is minimized by the tenure on the one hand, while the opportunity which the people have calmly to consider the work of a judge for a full term of years in deciding as to his re-election generally insures from them a fair and reasonable consideration of his qualities as a judge. While, therefore, there have been elected judges who have bowed before unjust popular prejudice or who have yielded to the power of political bosses in their decisions, I am convinced that these are exceptional and that, on the whole, elected judges have made a great American judiciary. But the success of an elective judiciary certainly furnishes no reason for so changing the system as to take away the very safeguards which have made it successful.

Attempt is made to defend the principle of judicial recall by reference to states in which judges are said to have shown themselves to be under corrupt corporate influence and in which it is claimed that nothing but a desperate remedy will suffice. If the political control in such states is sufficiently wrested from corrupting corporations to permit the enactment of a radical constitutional amendment like that of judicial recall it would seem possible to make provision in its stead for an effective remedy by impeachment, in which the cumberous features of the present remedy might be avoided, but the opportunity for judicial hearing and defense before an impartial tribunal might be retained.

Real reforms are not to be effected by patent short cuts or by abolishing those requirements which the experience of ages has shown to be essential in dealing justly with every one. Such innovations are certain in the long run to plague the investor or first user and will come readily to the hand of the enemies and corrupters of society after the passing of the just popular indignation that prompted their adoption.

Again, judicial recall is advocated on the ground that it will bring the judges more into sympathy with the popular will and the progress of ideas among the people. It is said that now judges are out of touch with the movement toward a wider democracy and a greater control of governmental agencies in the interest and for the benefits of the people. The righteous and just course for a judge to pursue is ordinarily fixed by statute or clear principles of law, and the cases on which his judgment may be affected by his political, economic or social views are infrequent.

But even in such cases judges are not removed from the people's influence. Surround the judiciary with all the safeguards possible, create judges by appointment, make their tenure for life, forbid diminution of salary during their term and still it is impossible to prevent the influence of popular opinion from coloring judgments in the long run. Judges are men—intelligent, sympathetic men, patriotic men—and in those fields of the law in which the personal equation unavoidably plays a part there will be found a response to sober popular opinion as it changes to meet the exigency of the social political and economic changes.

Indeed, this should be. Individual instances of a hidebound and retrograde conservatism on the part of courts in decisions which turn on the individual economic or sociological views of the judges may be pointed out, but they are not many and do not call for radical action. In treating of courts we are dealing with a human machine, liable like all the inventions of man to err, but we are dealing with a human invention that likens itself to a divine institution because it seeks and preserves justice It has been the cornerstone of our gloriously free government, in which the rights of the individual and of the minority have been preserved, while governmental action of the majority has lost nothing of beneficent progress, efficacy and directness. This balance was planned in the constitution by its framers and has been maintained by our independent judiciary.

Precedents are cited from state constitutions said to be equivalent to a popular recall. In some judges are removable by a vote of both houses of the legislature. This is a mere adoption of the English address of parliament to the crown for the removal of judges. It is similar to impeachment in that a form of hearing is always granted. Such a provision forms no precedent for a popular recall without adequate hearing and defense and with new candidates to contest the election.

It is said the recall will be rarely used. If so it will be rarely needed. Then why adopt a system so full of danger? But it is a mistake to suppose that such a powerful lever for influencing judicial decisions and such an opportunity for vengeance because of adverse ones will be allowed to remain unused.

But it is said that the people of Arizona are to become an independent state when created, and even if we strike out judicial recall now they can reincorporate it in their constitution after statehood.

To this I would answer that in dealing with the courts, which are the cornerstone of good government and in which not only the voters, but the nonvoters and nonresidents, have a deep interest as a security for their rights of life, liberty and property, no matter what the future action of the state may be, it is necessary for the authority which is primarily responsible for its creation to assert in no doubtful tones the necessity for an independent and untrammeled judiciary.

WILLIAM H. TAFT.

REPUBLICAN CANDIDATE For PROTHONOTARY

To the Republicans of Wayne County:—

Pursuant to the requests of my many friends in the county and the general understanding three years ago that I should again offer myself as a candidate for the nomination for Prothonotary at the coming primaries, September 30, I would state that after a short start by way of an education in the public schools of Wayne county, I completed a course at the A. M. Chisbro Seminary in Monroe county, New York. My post-graduate course was about thirty years in the school of hard knocks as a farmer and lumberman in Wayne county. Have met many people in the varied relations of a business man and this long experience has enabled me to meet many whom I esteem as my friends and gain at least enough knowledge to appreciate the needs and requirements of my fellowman.

My aim has steadily been to deal honestly, frankly and fairly with all and to dearly cherish all of our country's institutions, and to encourage and assist every true effort to maintain and advance them. I invite the fullest investigation of my record and with pleasure refer you to the expression given at the polls by my home district three years ago as indicative of the feelings of those who know me best. Although always a resident and large taxpayer in Wayne county, I never asked for office except on the afore mentioned occasion when I was defeated by M. J Hanlan who, though opposed to me, never, to my knowledge, said or did anything detrimental to me. I therefore earnestly request your support and promise if nominated and elected to faithfully perform the duties of the office to the very best of my judgment and ability and in all things observe the spirit of the Golden Rule.

Faithfully yours,

WALLACE J. BARNES.

REPUBLICAN CANDIDATE FOR COUNTY COMMISSIONER.

I. G. SIMONS,
Sterling, Pa.

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Attorneys-at-Law.

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E. C. MUMFORD, ATTORNEY & COUNSELOR-AT-LAW. Office—Liberty Hall building, opposite the Post Office. Honesdale, Pa.

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SEARLE & SALMON, ATTORNEYS & COUNSELORS-AT-LAW. Offices lately occupied by Judge Searle.

CHESTER A. GARRATT, ATTORNEY & COUNSELOR-AT-LAW Office adjacent to Post Office, Honesdale, P

Dentists.

DR. E. T. BROWN, DENTIST. Office—First floor, old Savings Bank building, Honesdale, Pa.

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LIVERY.—Fred. G. Rickard has removed his livery establishment from corner Church street to Whitney's Stone Barn

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