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Regular Vetoes and Pocket Vetoes: In Brief

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SUMMARY

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Regular Vetoes and Pocket Vetoes: In Brief

The veto power vested in the President by Article I, Section 7 of the Constitution has proven to be an effective tool in the executive branch's dealings with Congress. In order for a bill to become law, the President either signs the bill into law, or the President allows the bill to become law without signature after a 10-day period.

Regular vetoes occur when the President refuses to sign a bill and returns the bill complete with objections to Congress within 10 days. Upon receipt of the rejected bill, Congress is able to begin the veto override process, which requires a two-thirds affirmative vote in both chambers in order for the bill to become law. Pocket vetoes occur when the President receives a bill but is unable to reject and return the bill to an adjourned Congress within the 10-day period. The bill, though lacking a signature and formal objections, does not become law. Pocket vetoes are not subject to the congressional veto override process.

Since the founding of the federal government in 1789, 37 of 44 Presidents have exercised their veto authority a total of 2,572 times. Congress has overridden these vetoes on 110 occasions (4.3%). Presidents have vetoed 83 appropriations bills, and Congress has overridden 12 (14.5%) of these vetoes.

President Barack H. Obama has vetoed 10 bills since taking office in 2009. The three most recent vetoes, which all took place during the second session of the 114th Congress, were of

- H.R. 3762, Restoring Americans' Healthcare Freedom Reconciliation Act of 2015;

S.J.Res. 22, A joint resolution providing for congressional disapproval under Chapter 8 of title 5, United States Code, of the rule submitted by the Corps of Engineers and the Environmental Protection Agency relating to the definition of "waters of the United States" under the Federal Water Pollution Control Act; and

- H.J.Res. 88, Disapproving the rule submitted by the Department of Labor relating to the definition of the term "Fiduciary."

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This report presents information on the constitutional basis for vetoes, veto override procedure, and veto threats. It concludes with tables providing the counts of regular vetoes, pocket vetoes, and vetoes of appropriations acts. [1]

The President's veto authority is among the most significant tools in the executive branch's dealings with Congress. The U.S. Constitution outlines the veto authority in Article I, Section 7. Thirty-seven of 44 Presidents have used the veto. Presidents have vetoed 2,572 acts since 1789; of these, Congress has overridden 110 (4.3%).

Constitutional Basis

The U.S. Constitution (Article I, Section 7) provides that, for a bill to become law, it must be approved by both houses of Congress and presented to the President for approval and signature. Article I, Section 7 also provides the President with the power to veto, or "forbid," the bill from becoming law. The President may sign a bill into law within the 10-day period (excluding Sundays), let the bill become law without signature,[2] or veto the bill.

The Constitution states that when the President vetoes a bill, "he shall return it, with his Objections to that House in which it shall have originated." For example, if the President vetoes a bill that was introduced in the Senate, the bill will be returned first to the Senate where the possible override process would begin. This type of action is called a "regular" or "return" veto.

If, on the other hand, Congress has adjourned within the 10-day period after presentation of the bill to the President (thereby preventing the return of the bill to Congress), the President may refuse to sign the bill, and the act does not become law—a practice called a "pocket" veto.[3]

Overriding a Veto

If a bill is pocket vetoed while Congress is out of session, the only way for Congress to circumvent the pocket veto is to reintroduce the legislation as a new bill, pass it through both chambers, and present it to the President again for signature. [4] On the other hand, Congress may

[1] The report does not address two other types of vetoes—line-item vetoes (since the President currently has no such power) and legislative vetoes (which are wielded by Congress, not the President). It also does not address presidential signing statements. On the line item veto, see CRS Report R42383, *Budget Process Reform: Proposals and Legislative Actions in 2012*, by Megan S. Lynch, and CRS Report R40113, *Federal Budget Process Reform in the 111th Congress: A Brief Overview*, by Megan S. Lynch. On the legislative veto, see CRS Report RS22132, *Legislative Vetoes After Chadha*, by Louis Fisher. The author of that report is no longer at CRS. Questions from congressional clients about its content can be directed to the author of this report. For information about signing statements, see CRS Report RL33667, *Presidential Signing Statements: Constitutional and Institutional Implications*, by Todd Garvey.

[2] A bill will become law without the President's signature if the President refuses to sign the bill and refuses to return the bill to an active Congress within 10 days of being presented with the bill. U.S. Constitution, Art. I, Sec. 7 states, "If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law."

[3] For more information, see pages 1-3 of CRS Report R41217, *Presenting Measures to the President for Approval: Possible Delays*, by Richard S. Beth.

[4] Recent Presidents and Congresses have disagreed about what constitutes a pocket veto. For more information about this debate, congressional clients may contact the author of this report for a copy of a congressional distribution memo, "Asserted Use of the Pocket Veto During the George W. Bush and Barack Obama Administrations," by Alissa M. Dolan and Meghan M. Stuessy.

override a regular veto without introducing new legislation through the process described in the U.S. Constitution.

According to Article 1, Section 7 of the Constitution, when the President chooses not to sign a bill and instead returns it to the chamber from where it originated, the chamber enters the message of the President detailing the reasons for his or her refused approval into its Journal and then proceeds "to reconsider" the bill. Because the Constitution does not state exactly how Congress should reconsider a vetoed bill, House and Senate procedures govern the specific treatment of acts returned by the President.[5] Passage by a two-thirds margin in both chambers is required to override a veto before the end of the Congress in which the veto is received.[6] If a two-thirds vote is successful in the originating chamber, that chamber informs the other of its decision to override the veto by message. Neither chamber is under any constitutional, legal, or procedural obligation to schedule an override vote. It is not unusual for Congress to make no effort to override the veto if congressional leaders do not believe they have sufficient votes.

Veto Signaling

A veto threat can also prove to be an effective tool for the President, sometimes forcing Congress to modify legislation before presenting the bill to the President.[7] In addition to public addresses concerning legislation, the President has the ability to issue Statements of Administration Policy (SAPs) to express the Administration's view on a bill.[8] SAPs are a written form of communication between the Administration and Congress and are typically issued shortly before floor action on the bill.[9] The Office of Management and Budget coordinates the creation of SAPs on behalf of the Executive Office of the President.

SAPs communicate varying levels of Administration support or opposition to a bill. Importantly, SAPs are generally the first formal indicator of the Administration's intent to veto a bill. SAPs containing veto threats contain language indicating either the President's intent to veto, the President being advised to veto by agencies, or the President being advised to veto by the Administration's senior advisors. SAPs are transmitted by the White House to Congress; they are also available on the White House website.[10]

[5] For information on House and Senate procedures for considering vetoed bills, see CRS Report RS22654, *Veto Override Procedure in the House and Senate*, by Elizabeth Rybicki.

[6] Although the Constitution states that approval requires "two thirds of that House," congressional procedure, tradition, and judicial rulings have interpreted this requirement to mean two thirds of those Members present and voting, provided there is a quorum present.

[7] For more information about veto threats and SAPs, see page 3 of CRS Report R44539, *Statements of Administration Policy*, by Meghan M. Stuessy.

[8] For more information on SAPs, see CRS Report R44539, *Statements of Administration Policy*, by Meghan M. Stuessy.

[9] Shelley Lynne Tomkin, *Inside OMB: Politics and Process in the President's Budget Office* (New York: M. E. Sharpe, Inc., 1998), p. 18.

[10] Office of Management and Budget, "Statements of Administration Policy on Non-Appropriations and Appropriations Bills," July 2016, at https://www.whitehouse.gov/omb/legislative_sap_default.

Vetoes Exercised and Overridden

Regular Vetoes and Pocket Vetoes

Table 1 shows that 37 of 44[11] Presidents have exercised their veto authority on a total of 2,572 occasions since 1789. Of that number, 1,506 (58.6%) were regular vetoes—that is, the rejected legislation was returned to the congressional chamber of origin, while it was in session, with a presidential message of explanation—and 1,066 (41.5%) were pocket vetoes, or rejected while Congress was adjourned.[12] Congress has overridden 110 (7.3%) of the 1,506 regular vetoes. This percentage is skewed downward by the large number of vetoes prior to the 87th Congress (which began in 1961).[13] If one counts only the regular vetoes since 1961 (the beginning of the Kennedy Administration), one finds 241 vetoes and 37 overridden (15.4%).

George W. Bush (2001-2009) was the first President since John Quincy Adams (1825-1829) to serve a full four-year term without using his veto. No President since Thomas Jefferson (1801-1809) has served two full terms without vetoing a bill, as President Bush used his veto in July 2006.

President Barack H. Obama has vetoed 10 bills since taking office in 2009. The three most recent vetoes, which all took place during the second session of the 114th Congress, were of

- H.R. 3762, Restoring Americans' Healthcare Freedom Reconciliation Act of 2015;

S.J.Res. 22, A joint resolution providing for congressional disapproval under Chapter 8 of title 5, United States Code, of the rule submitted by the Corps of Engineers and the Environmental Protection Agency relating to the definition of "waters of the United States" under the Federal Water Pollution Control Act; and

- H.J.Res. 88, Disapproving the rule submitted by the Department of Labor relating to the definition of the term "Fiduciary."

[11] There have been 44 presidencies, but only 43 persons have served as President. Grover Cleveland was elected to two nonconsecutive presidencies.

[12] President George H.W. Bush attempted to pocket veto two bills during intrasession recesses. Congress considered the two bills enacted into law because the President had not returned the legislation. These two disputed vetoes are not included in **Table 1**. These attempts during the George H.W. Bush Presidency are discussed in CRS Report RL30909, *The Pocket Veto: Its Current Status*, by Louis Fisher. This report has been archived and a copy can be made available to congressional clients upon request. This report considers instances where Congress has treated a disputed pocket veto like a regular veto to be a regular veto and includes them in the counts provided. For more information about the current state of the pocket veto, congressional clients may contact the author of this report for a copy of a congressional distribution memo, "Asserted Use of the Pocket Veto During the George W. Bush and Barack Obama Administrations," by Alissa M. Dolan and Meghan M. Stuessy.

[13] Most vetoes prior to 1961 were of private bills (i.e., legislation that would confer benefits upon a single person or company) and were rarely overridden. In 1971, Congress increased the maximum dollar amount for which individual claims under that amount would be handled at an administrator's discretion. Thus, the need for congressionally passed private bills dropped—from hundreds per annum to a few dozen—and, therefore, the number of opportunities for vetoes also dropped. On current practice regarding private bills, see CRS Report RS22450, *Procedural Analysis of Private Laws Enacted: 1986-2015*, by Christopher M. Davis.

Table 1. Presidential Vetoes, 1789-2016

President	Coincident Congresses	Regular Vetoes	Pocket Vetoes	Total Vetoes	Vetoes Overridden
Washington	1st -4th	2	—	2	—
J. Adams	5th -6th	—	—	—	—
Jefferson	7th -10th	—	—	—	—
Madison	11th -14th	5	2	7	—
Monroe	15th -18th	1	—	1	—
J. Q. Adams	19th -20th	—	—	—	—
Jackson	21st -24th	5	7	12	—
Van Buren	25th -26th	—	1	1	—
W. H. Harrison	27th	—	—	—	—
Tyler	27th -28th	6	4	10	1
Polk	29th -30th	2	1	3	—
Taylor	31st	—	—	—	—
Fillmore	31st -32nd	—	—	—	—
Pierce	33rd -34th	9	—	9	5
Buchanan	35th -36th	4	3	7	—
Lincoln	37th -39th	2	5	7	—
A. Johnson	39th -40th	21	8	29	15
Grant	41st -44th	45	48	93	4
Hayes	45th -46th	12	1	13	1
Garfield	47th	—	—	—	—
Arthur	47th -48th	4	8	12	1
Cleveland	49th -50th	304	110	414	2
B. Harrison	51st -52nd	19	25	44	1
Cleveland	53rd -54th	42	128	170	5
McKinley	55th -57th	6	36	42	—
T. Roosevelt	57th -60th	42	40	82	1
Taft	61st -62nd	30	9	39	1
Wilson	63rd -66th	33	11	44	6
Harding	67th	5	1	6	—
Coolidge	68th -70th	20	30	50	4
Hoover	71st -72nd	21	16	37	3
F. D. Roosevelt	73rd -79th	372	263	635	9
Truman	79th -82nd	180	70	250	12
Eisenhower	83rd -86th	73	108	181	2
Kennedy	87th -88th	12	9	21	—

President	Coincident Congresses	Regular Vetoes	Pocket Vetoes	Total Vetoes	Vetoes Overridden
L. B. Johnson	88th -90th	16	14	30	—
Nixon	91st -93rd	26	17	43	7
Ford	93rd -94th	48	18	66	12
Carter	95th -96th	13	18	31	2
Reagan	97th -100th	39	39	78	9
G. H. W. Bush	101st -102nd	29	15	44	1
Clinton	103rd -106th	36	1	37	2
G. W. Bush	107th -110th	12	—	12	4
Obama	111th -	10	—	4	—
Total		1,506	1,066[a]	2,566	110

Sources: U.S. Congress, Senate, Secretary of the Senate, "Vetoes" web page, available at http://www.senate.gov/reference/reference_index_subjects/Vetoes_vrd.htm.

a. Recent Presidents and Congresses disagree about what constitutes a pocket veto. This table defers to the Senate's count of pocket vetoes.

Vetoes of Appropriation Acts

A veto of an appropriations bill can result in a funding gap, which may lead to the closure of federal agencies, the furlough of federal employees, and the interruption of federal programs and services.[14] Despite these potential outcomes, Presidents have vetoed 83 appropriations bills since 1789; more than half of these vetoes have occurred since 1968.[15] For example, Presidents Carter, Reagan, George H. W. Bush, and Clinton were presented with a total of 387 appropriations acts and vetoed 30 of them (7.8%).[16] President Barack H. Obama has vetoed one appropriations bill. Congressional overrides of vetoes of appropriations are not unusual; 12 of the 83 vetoes (14.5%) have been overridden (see **Table 2**).

[14] For additional information on federal government shutdowns, see CRS Report RL34680, *Shutdown of the Federal Government: Causes, Processes, and Effects*, coordinated by Clinton T. Brass.

[15] The data in this section and in **Table 2** include annual appropriations acts (which provide annual funding for the routine operations of most federal agencies), supplemental appropriations acts, and continuing appropriations acts. Excluded are measures dealing with impoundments, transfers, line-item vetoes under the Line Item Veto Act of 1996, and bills proposing appropriations for the relief of private claims.

[16] CRS Report RS22188, *Regular Vetoes and Pocket Vetoes: In Brief*, by Meghan M. Stuessy. This report has been archived and a copy can be made available to congressional clients upon request from the author of this report.

Table 2. Appropriations Acts Vetoed, 1789-2016

President	Coincident Congresses	Approp. Acts Vetoed	Vetoes of Approp. Acts Overridden
Washington	1st -4th	—	—
Adams	5th -6th	—	—
Jefferson	7th -10th	—	—
Madison	11th -14th	—	—
Monroe	15th -18th	—	—
J. Q. Adams	19th -20th	—	—
Jackson	21st -24th	—	—
Van Buren	25th -26th	—	—
W. H. Harrison	27th	—	—
Tyler	27th -28th	2	—
Polk	29th -30th	1	—
Taylor	31st	—	—
Fillmore	31st -32nd	—	—
Pierce	33rd -34th	4	2
Buchanan	35th -36th	1	—
Lincoln	37th -39th	—	—
A. Johnson	39th -40th	—	—
Grant	41st -44th	—	—
Hayes	45th -46th	5	—
Garfield	47th	—	—
Arthur	47th -48th	1	1
Cleveland	49th -50th	1	—
B. Harrison	51st -52nd	—	—
Cleveland	53rd -54th	5	1
McKinley	55th -57th	—	—
T. Roosevelt	57th -60th	—	—
Taft	61st -62nd	4	—
Wilson	63rd -66th	8	—
Harding	67th	1	—
Coolidge	68th -70th	—	—
Hoover	71st -72nd	2	—
F. D. Roosevelt	73rd -79th	1	1
Truman	79th -82nd	1	1
Eisenhower	83rd -86th	3	1
Kennedy	87th -88th	—	—

President	Coincident Congresses	Approp. Acts Vetoed	Vetoes of Approp. Acts Overridden
L. B. Johnson	88th -90th	—	—
Nixon	91st -93rd	5	1
Ford	93rd -94th	5	3
Carter	95th -96th	2	—
Reagan	97th -100th	6	1
G. H. W. Bush	101st -102nd	8	—
Clinton	103rd -106th	14	—
G. W. Bush	107th -110th	2	—
Obama	111th -	1	—
Total		83	12

Sources: U.S. Congress, Senate, Secretary of the Senate, "Vetoes" web page, available at http://www.senate.gov/reference/reference_index_subjects/Vetoes_vrd.htm.

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