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REMARKS

OF

HON. ROBERT L. OWEN

OF OKLAHOMA

REPLYING TO THE PRESIDENT'S VETO OF
THE ARIZONA AND NEW MEXICO
STATEHOOD BILL

IN THE

SENATE OF THE UNITED STATES

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WASHINGTON

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The Senate having under consideration the joint resolution (S. J. Res. 57) to enable the people of New Mexico to form a constitution and State government and be admitted into the Union on an equal footing with the original States, and to enable the people of Arizona to form a constitution and State government and be admitted into the Union upon an equal footing with the original States—

Mr. OWEN said:

Mr. PRESIDENT: Stripped of all verbiage, the meaning of the veto of the President because of the "judicial recall" in the Arizona constitution is a declaration on the part of the Chief Executive that he is unwilling to admit Arizona and New Mexico to enjoy the rights of self-government on an equal footing with the other States of the Union as guaranteed by the Constitution, because Arizona proposes to exercise this right in a manner the Chief Executive does not approve.

It is not pretended that the "judicial recall" is in violation of the Constitution of the United States, of the Declaration of Independence, or of the enabling act.

The President thinks the judicial recall is not wise "governmental policy," and therefore he refuses to allow a sovereign State to exercise its own right of self-government, because, in the proposed exercise of this right, the people do not yield to his views. He thinks Arizona should be denied statehood because, under its constitutional right of self-government, they favor the judicial recall. His sole justification for denying Arizona its right to statehood on an equal footing with the other States of the Union is because, in the exercise of such right, they adopt the judicial recall by the vote of the people. He does not approve this. He says that, in his opinion, it "is destructive of free government." The fact is such a veto is "destructive of free government." To deny the right of free government to a sovereign State by veto as a condition of its admission on an equal footing with the other States is a grave wrong done to "free government."

It is an unwarrantable attack on the fundamental right of self-government, which I deeply regret.

Arizona proposes the freest government in the United States, giving the majority of the people of the State the right to amend their constitution at will; to nominate, elect, and recall their own officials. If they find the judicial recall inexpedient, under the free government of Arizona they can amend it at any time. Thirty-two States of the Union provide in their constitutions for the recall of judges by the address of the legislature. Forty-three States provide the automatic recall by short tenure, but the recall by popular vote, although conceded to be a right which other States have, which Oregon has long enjoyed,

and which California is about to adopt, is to be denied Arizona, and her people are to be denied the right of self-government because they have dared to adopt it.

With profound respect for our Chief Executive, I deem it my duty to say that the veto is not justified, for the simple reason that the people of Arizona, under the right to be admitted on an equal footing with the other States in the Union, have a right to govern themselves in their own way without the interference or coercion of the Chief Executive of the United States.

The power of the Executive is so great, since a minority of the Senate can sustain the veto, that he is able to coerce Arizona by his veto, to coerce Congress by his veto, into requiring Arizona to strike out the judicial recall or remain out of the Union.

It is not denied that Arizona will have the right legally to provide the judicial recall immediately after admission, nor is it doubtful that Arizona will immediately adopt it when admitted.

It seems to be the idea of the President merely to emphasize before the country his disapproval of the judicial recall by vote of the people, and I feel it my duty as an advocate of popular government to place on the records of the country an answer to the reasoning offered by the President in justification of the veto.

But, first, I think it proper to say that the presidential veto is not justified, even if he were right in disapproving the judicial recall. The President is in grave error to deny the people of Arizona the free and full right of self-government merely because in the exercise of their acknowledged right of self-government they do not yield to his personal views. The President is in grave error in coercing them, as a condition of admission to statehood, to submit to his will, and he does a wrong to all those who believe in the judicial recall by this abuse of the veto power, by using the powers of the Presidency and the prestige of that high office to put the seal of his condemnation on this policy of government. He does a wrong to both California and Oregon in such an unjustified veto.

The first reason offered by the President is that the majority of the people of Arizona can not be trusted to deal justly with the State judges, if they are subject to recall. He suggests that the "unbridled expression of the majority, converted hastily into law or action, would sometimes make a government tyrannical and cruel;" that the majority should be subject to checks to prevent the abuse of their power on the minority. The President says:

Constitutions are checks upon the hasty actions of the majority. They are the self-imposed restraints of the whole people upon a majority of them to secure sober action and a respect for the rights of the minority.

The President does not trust the majority of the people unless they are obstructed in the exercise of their will by various checks and devices. This is the vital point of difference between the progressives and those who oppose the progressive movement. The progressives believe in the integrity, honesty, and wisdom of the majority. They believe that the majority is conservative. The majority well knows that it consists of

individuals, of groups of individuals, and of minorities, and that the safety of the majority absolutely depends upon the protection of the individual and of the minority. It is for this very reason that the majority have always declared in favor of free religion, free speech, and every liberty justified by the rights of others. It is this clear conception of the majority that has all these years given protection to the individual by the voluntary and deliberate act of the majority. I deeply regret that our honored Executive should take the view of those who oppose the progressive movement, and should speak of the "unbridled expression of the majority," "the hasty action of the majority," and suggest that the majority might be swept "by momentary gusts of popular passion," "by hasty anger," or be moved by "firebrands and slanderers" and by "stirrers-up of social hate."

Mr. President, the sober common sense of the majority of the people, exercising its right in the dignity, quiet, and seclusion of the voting booth, is not moved by the mob spirit; it is not turbulent, violent, moved by "hasty anger" or "gusts of popular passion." The views of the majority of the people, under the safeguards of the American ballot box, is the most conservative, thoughtful, and trustworthy power in the United States, and will abundantly safeguard the right of the individual citizen to all of his rights to life, liberty, and the pursuit of happiness. It is only on the majority the citizen can rely. The danger of the citizen is to be found in the craft and corruption of the few, of the minority, who have by indirection and by checks on the majority usurped undue power in the governing business.

The danger of this country lies in the governmental control by minorities and by the agencies through which they operate, including a judiciary nominated by privilege and kept in power by craft.

Our honored Chief Executive suggests that "often an intelligent and respectable electorate may be so roused upon an issue that it will visit with condemnation a decision of a just judge." I emphatically deny it. An "intelligent and respectable electorate" will not visit with condemnation a decision of a just judge at any time, much less with frequency or "often," as our honored Chief Executive imagines. The majority elects and reelects and continues to reelect just judges in our numerous States, and the more just the judge the more certain is his reelection. Not an instance can be given of a judge defeated by the people because of his upright conduct.

The idea that the majority of the people will be moved by "hasty anger" against a faithful judge executing the law laid down by the representatives of the majority has no just foundation in fact. The majority of the people will never be moved by hasty anger to deal unjustly with a faithful public servant. The majority moves only too slowly in dealing with unfaithful public servants, and this is manifested by the experience of the governments of many of the cities of the Republic and of the States where it frequently happens that organized criminal minorities, engaged in the governing business for profit, are permitted for long periods of time to pursue their bad conduct without being called to vigorous account by the justifiable anger of the majority.

The President thinks the judicial recall is "destructive of free government." The people of Arizona, like Oregon and California, familiar with gross judicial abuses and a control of the judiciary in California by the Southern Pacific Railroad, believe the judicial recall an essential part of free government.

But whether the people of Arizona or the President be right, there is no doubt whatever that the people of Arizona have the right to determine this matter for themselves, and that the Chief Executive has no right to coerce them in the matter of their own self-government. The President has raised the issue as to whether or not the people of Arizona should have the right of self-government or whether they should be denied this right, and on this issue, I think, the President is in error to deprive them of the right to govern themselves merely because they do not propose to govern themselves in accordance with his opinion.

The second point which the President makes is that the judges, under the judicial recall by a vote of a majority of the people, would be so intimidated that they would become "timeservers and trimmers." The President says:

The character of the judges would deteriorate to that of trimmers and timeservers, and independent judicial action would be a thing of the past.

Mr. President, the character of our State judges, who are elected by the people for short terms and who are subject to automatic recall and who are subject to recall by the legislatures without impeachment and without assigning cause for recall, shows that the President's anticipations are not justified. Our State judiciary is well deserving of the commendation which even the President generously gives.

The people ordinarily select good men for judges, and the judges in the very great majority of cases, under the system of popular election and short tenure, have not become "trimmers and timeservers." The recall of State judges is so rare I do not remember a single case in recent years. Undoubtedly they are subject to the influence of sound, matured public opinion, and it is only right that they should be. All men, whether judges or not, are subject to the influences that surround them, and it is this very fact, which the President so strongly emphasizes—that the judges are subject to influence—that makes it of the greatest importance that the influences which do environ the judge should be good influences and not bad influences.

The very reason the people of Arizona demanded the judicial recall by popular vote grew out of the experience in California, where the judges were under the influence of the Southern Pacific Railroad. Privilege can exercise its influence in a great variety of ways. For example, it can skillfully bring about, by machine methods, the nomination of a man and the election or appointment of a judge whose previous predilection is altogether favorable to privilege, though not understood by the people.

Privilege can, by the hypnotic influences of skilled social and personal agencies, lead the mind of a man away from the people and into the service of privilege, and since judges are equally subject to the crafty occult influences of privilege, as well as to the influences of public opinion, we must choose

which of the two influences shall prevail. Those who believe in the progressive movement prefer the influence of the people to the influence of privilege. I believe that the American people, when they have considered this question, will decide that since the judges are more or less subject to influence, it is better to have them subject to the conservative, honorable, wise, and just influence of public opinion rather than to have them subject to the crafty or corrupt influence of privilege without any power in the people of a direct remedy. Between the influence of privilege and the influence of the people, I stand firmly for the influence of the people, and this I regard to be the vital issue in dealing with the control of the judiciary, whether in the State or in the Nation.

It is this difference in the point of view between the PROGRESSIVES AND THEIR OPPONENTS THE PEOPLE OF THE UNITED STATES MUST SETTLE.

Mr. President, I ask to have printed as a Senate document an abstract of the argument on the recall of judges which I delivered some days ago.

The VICE PRESIDENT. Without objection, an order for the printing thereof will be entered. [S. Doc. No. 99.]

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