On August 28, 1958:

MRS. FRANK C. GREGG

H. R. 1829. I am withholding my approval from H. R. 1829, for the relief of the estate of Mrs. Frank C. Gregg.

The effect of this bill would be to accord to the beneficiary a form of tax treatment that Mrs. Gregg, as a stockholder in a corporation liquidated pursuant to a plan of complete liquidation, might have elected to receive. Such election, under existing law, must be made by four-fifths of the corporation's voting stock interest within 30 days after adoption of the liquidation plan. Mrs. Gregg, who held less than a four-fifths voting stock interest, did not make an election within the specified 30-day period.

In support of this claim for special relief, the taxpayer's representative relies upon the fact that he was unable to obtain certain forms prescribed for making the election. It appears, however, that a letter notifying the Commissioner of the unavailability of such forms and the desire to make an election would have been sufficient.

The taxpayer's representative also relies upon the fact that Mrs. Gregg became seriously ill 25 days after the adoption of the plan of liquidation. A timely election was not made, however, by any of the other shareholders in the corporation who would also have had to have made such an election for Mrs. Gregg, or any of them, to have received the tax treatment in question. Mrs. Gregg's sickness had no bearing upon their failure to do so. Accordingly, even if she had made a timely election, Mrs. Gregg would not have been entitled to the tax treatment this bill would now accord her estate.

This legislation would, therefore, confer benefits on Mrs. Gregg's estate which none of the other shareholders in the corporation are entitled by law to receive.

Because such special relief would constitute an inequitable discrimination against other taxpayers similarly situated, I am constrained to withhold my approval from the bill.

On August 28, 1958:

BONIFACIO SANTOS

H. R. 6773. I am withholding my approval from H. R. 6773, for the relief of Bonifacio Santos.

This bill would authorize the payment of $1,500 in reimbursement for a contribution made by Mr. Santos in 1944 to the Philippine guerrilla forces fighting the Japanese.

The beneficiary states that in 1944 he made a contribution of 3,000 Japanese occupation pesos to the Philippine guerrilla forces. He supports his claim with an affidavit from an American officer who recalls receiving the money, and also a receipt for the money, dated in 1944 and signed by the same officer.

After the war, a general program was established in the Philippine Islands for the payment of such claims based upon aid or services furnished the guerrillas in their fight against the Japanese. Despite the widespread publicity attendant upon this program, as evidenced by the hundreds of thousands of claims submitted, no administrative claim was ever filed by the beneficiary. He states he was unaware of his right to do so.

Awards under the general claims program were uniformly paid according to the so-called Ballantyne scale for currency conversion. Under that scale, the present case would have resulted in an award to the beneficiary of $16.67. This bill, in contrast, proposes an award of $1,500.

Approval of H. R. 6773 would be both discriminatory and inequitable. The record on this bill furnishes no valid basis for distinguishing the beneficiary from thousands of others whose claims were rejected because they were not filed until after the termination of the general program. Furthermore, it would be entirely without justification to pay to this beneficiary a sum 90 times larger than he could have received had he been paid under the general claims program.

For the foregoing reasons, I have considered it necessary to withhold my approval from H. R. 6773.

On August 28, 1958:

MR. AND MRS. JOHN R. HADNOT

H. R. 9180. I am withholding my approval of H. R. 9180, a bill for the relief of Mr. and Mrs. John R. Hadnot for the reason that its major purposes are accomplished by the enactment of the Social Security Amendments of 1958, coupled with the provisions of existing law which authorize the Secretary of Health, Education, and Welfare to waive the repayment of incorrect social security payments.

The son of the beneficiaries, his wife, and 2 minor children were involved in a tragic automobile accident on July 4, 1956. All perished together except for 1 child under 18 who survived for about 1½ hours without regaining consciousness.

The beneficiaries, Mr. and Mrs. Hadnot, on December 14, 1956, filed a claim under the Social Security Act for dependent parents' benefits. After they had received monthly benefits totaling $814 each, it was determined that these payments, entirely without fault of the beneficiaries, had been improperly made because of the brief survival of the beneficiaries' grandson. As required by law, the benefit payments were suspended and the beneficiaries were notified that the payments already received had been incorrectly made.

The Social Security Amendments of 1958, approved this day, contain a general provision permitting surviving dependent parents of insured workers to receive monthly benefits even when the decedent was also survived by a spouse or child eligible for such benefits. Mr. and Mrs. Hadnot can, by filing application, avail themselves of this general provision and become entitled prospectively to benefits. With respect to the payments already made to them, incorrectly, there is every reason to believe that they will receive sympathetic and equitable consideration under the waiver provision of existing law.

The only remaining question is whether this bill should be approved so that Mr. and Mrs. Hadnot may receive retroactive payments for the month since April 1957. To provide such payments would be to grant preferential treatment and thus to discriminate against other individuals who might be similarly situated. Except in cases of the most compelling equity, such special treatment should be avoided.

On August 28, 1958:

MR. MARION S. SYMMS

H. R. 9765. I am withholding approval of H. R. 9765, for the relief of Mr. Marion S. Symms.

The bill would provide that, notwithstanding any statutory period of limitation, refund or credit shall be made or allowed to Marion S. Symms, Augusta, Ga., of any overpayments of income tax for the year 1952, if claim therefor is filed within 6 months after the date of enactment.

The records of the Treasury Department show that Mr. Symms filed a timely income-tax return for 1952 in which he reported as income certain disability payments received by him. At the time the taxpayer filed his return for 1952, the Court of Appeals for the Seventh Circuit had held that such disability payments were excludable from gross income, although the Internal Revenue Service had ruled to the contrary.

On April 1, 1957, the United States Supreme Court decided that disability payments of the type received by the taxpayer were excludable from gross income. On November 6, 1957, more than 4½ years after the taxpayer's return for 1952 was filed, the taxpayer filed a claim for refund based upon the excludability of the disability pay received by him in 1952. This claim was rejected because it was filed after the expiration of the 3-year period of limitations prescribed by law for the filing of such claims.

The statutory period of limitations, which the Congress has included in the revenue system as a matter of sound policy, is essential in order to achieve finality in tax administration. Moreover, a substantial number of taxpayers paid income tax on disability payments received by them during the period of the Internal Revenue Service ruling that such disability payments were includible in income. To grant special relief in this case, therefore, where a refund was not claimed in the time and manner prescribed by law, would constitute a discrimination against other similarly situated taxpayers and would create an undesirable precedent.

Under the circumstances, therefore, I am constrained to withhold my approval of the bill.

On August 28, 1958:

MISS MARY M. BROWNE

H. R. 9993. I am withholding my approval from H. R. 9993, for the relief of Miss Mary M. Browne.

The bill would provide that, notwithstanding any statutory period of limitation, refund or credit shall be made or allowed to the beneficiary of any overpayment of income tax for the year 1951, if claim therefor is filed within 1 year after the date of enactment.

The taxpayer, in filing her income-tax return for 1951 and paying the amount shown on the return, failed to take credit for a previous partial payment of income

tax which the taxpayer had made for 1951. The Internal Revenue Service did not match the taxpayer's prepayment documents with her return for 1951 and was not aware of the taxpayer's error. In March 1955, an agent of the Internal Revenue Service discovered the possibility of the erroneous overpayment when he assisted the taxpayer in preparing her income-tax return for 1954. At that time the 3-year statutory period of limitation had not expired, and the agent advised the taxpayer to file a claim for refund. The taxpayer, however, did not file her claim until about 2 months later, at which time the statutory period had expired, and the claim could not under the law be allowed. The record on this bill affords no explanation for the taxpayer's failure to file a timely claim for refund.

The statutory period of limitations, which the Congress has included in the revenue system as a matter of sound policy, is essential in order to achieve finality in tax administration. Granting special relief in this case would constitute a discrimination against other taxpayers similarly situated and would create an undesirable precedent.

For these reasons I am constrained to withhold my approval from the bill.

On August 28, 1958:

NORTH COUNTIES HYDRO-ELECTRIC CO.

H. R. 10419. I am withholding my approval from H. R. 10419, for the relief of North Counties Hydro-Electric Co.

The bill provides that—

notwithstanding any statute of limitation, lapse of time, or any prior court decision of this claim by any court of the United States, jurisdiction is hereby conferred upon the United States Court of Claims to hear, determine, and render judgment on the claim of North Counties Hydro-Electric Co., of Illinois, against the United States for damages to its powerplant and dam at Dayton, Ill., sustained as the result of a dam built by the United States on the Illinois River, at Starved Rock near Ottawa, Ill.

The North Counties Hydro-Electric Co. owns a hydroelectric power development on the Fox River near Dayton, Ill. On two occasions, once in 1943 and again in 1952, the company suffered damages to its facilities from ice jams and flooding in the river. It twice brought suit against the United States in the Court of Claims alleging that the ice jam and flooding were caused by the erection by the United States of the Starved Rock Dam, which is located on the Illinois River at a point approximately 14 miles below the corporation's properties. In each instance the decision of the Court of Claims went against the company.

The matters covered by this bill have been fully considered on their merits and decided adversely to the corporation. The company has had its day in court on two occasions and the Court of Claims should not now be required to consider the same matter again.

On September 2, 1958:

SOUTHWEST RESEARCH INSTITUTE

H. R. 1494. I am withholding my approval from H. R. 1494, for the relief of the Southwest Research Institute.

This bill would direct the Secretary of the Treasury to pay to the Southwest Research Institute such sum, not exceeding $8,200.84, as the Housing and Home Finance Administrator may approve. This payment would be for services rendered by the beneficiary in excess of its written contract with the Government.

Approval of this legislation could well encourage others to perform unauthorized work and expect payment therefor from the Government. Furthermore, under this bill this organization would receive preferential treatment which has in the past been denied other research contractors who performed work in excess of their contract obligations.

On September 2, 1958:

HARRY N. DUFF

H. R. 1695. I am withholding my approval from H. R. 1695, for the relief of Harry N. Duff.

This bill would confer jurisdiction on the Court of Claims, notwithstanding the applicable statute of limitations, to adjudicate the claim of Harry N. Duff arising out of the failure of the then War Department to retire him, in 1946, for physical disability incurred as an incident of his military service.

The beneficiary of this bill had a long history of spinal trouble and arthritis while serving as an officer in the Army during World War II. He contends that these disabilities were suffered or aggravated as a result of injuries incurred in the service. Although early medical records do not support this contention, in 1945 an Army retiring board found the beneficiary permanently incapacitated for active duty as an incident of the service and recommended his retirement.

Reviewing the case in accordance with applicable regulations, the Office of the Surgeon General of the Army disagreed with the findings of the retiring board and requested it to reconsider the case. Upon reconsideration, the retiring board reaffirmed its previous findings, whereupon the Office of the Surgeon General recommended to the Secretary of War that the findings of the board be disapproved. The recommendation of that office was based on its opinion that a spinal defect and arthritis clearly had existed prior to entry on active duty and had not been aggravated permanently by such service. The findings of the board were disapproved by the Secretary of War, and the beneficiary was thereupon released from active duty in 1946, without entitlement to retired pay. In 1949, however, he was awarded disability compensation by the Veterans' Administration on account of service-aggravation of a congenital defect.

The beneficiary appealed the decision in his case to the statutory Army Disability Review Board. In 1947 this Board affirmed the decision of the Secretary of War and, subsequently, reaffirmed its decision upon a request for reconsideration. In 1955 the Army Board for Correction of Military Records found no error or injustice in the determinations which had been made in the beneficiary's case. He also brought an action in the Court of Claims in 1955, which was dismissed as barred by the statute of limitations.

Traditionally, eligibility for retirement on account of physical disability has been determined by the military services in accordance with general provisions of law. Appellate review of these determinations has been provided within the executive branch by means of statutory boards such as the Disability Review Board and the Board for Correction of Military Records.

In recent years the Court of Claims has been petitioned in various cases to award disability retirement to individuals who have been found not entitled to such pay by the Secretary of the military department concerned. In consistently denying these petitions, the court has stated, in effect, that, under the statutory procedures for determining and reviewing entitlement to retirement, it has jurisdiction only in cases where it can be shown that the cognizant military Secretary has acted arbitrarily, capriciously, or plainly contrary to law.

I believe that this rule which the Court of Claims has adopted is a sound one. It conforms to an important principle underlying judicial review of administrative decisions; namely, that the courts will not substitute their judgment for that of the experienced officials who have been given adjudicative responsibility by law. For this reason and since there is no evidence in this case that the Secretary of War acted arbitrarily, capriciously, or contrary to law, I can see no justification for special legislation which would require the Court of Claims to grant the beneficiary a de novo hearing.

Approval of this bill would discriminate against the many hundreds of individuals who have had their claims for disability retirement denied without benefit of judicial review. It would also establish an undesirable precedent leading to other exceptions to the orderly procedure which is now provided for under general law and which currently governs the hundreds of similar cases that are adjudicated each year.

On September 2, 1958:

TOLEY'S CHARTER BOATS, INC., ETC.

H. R. 3193. I am withholding my approval from H. R. 3193, entitled "For the relief of Toley's Charter Boats, Inc., Toley Engebretsen, and Harvey Homlar."

The bill would direct the Secretary of the Treasury to pay the sum of $37.65 to Toley's Charter Boats, Inc., of Salerno, Fla., and the sum of $3,227.10 to Toley Engebretsen and Harvey Homlar, of Salerno, Fla., in full settlement of all claims of the named persons for a refund of taxes paid pursuant to section 3469 of the Internal Revenue Code of 1939, relating to tax on the transportation of persons.

The records of the Treasury Department show that the amounts which this bill would refund to the claimants were paid as transportation taxes with respect to fees charged for the charter of fishing boats by the claimants at various times between January 1945 and November 1951. On March 31, 1953, the District Court for the Northern District of Florida held that the transportation tax was not applicable to amounts paid for fishing parties in situations similar to the one involved in this bill. On the date of this decision, the claimants could have