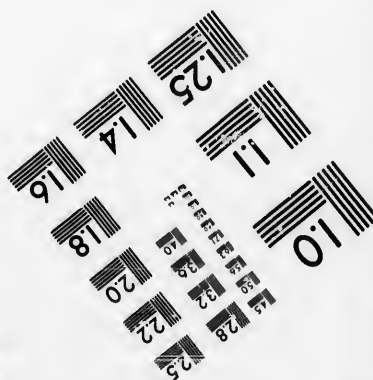
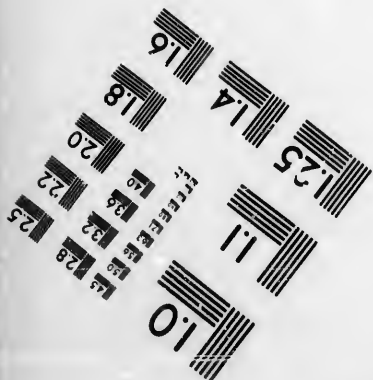
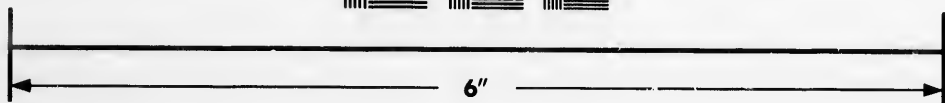
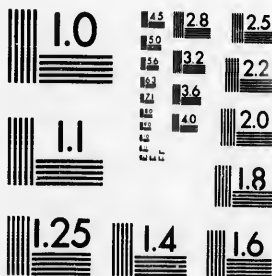


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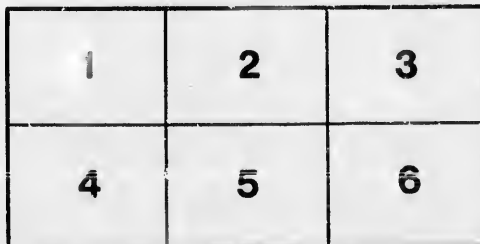
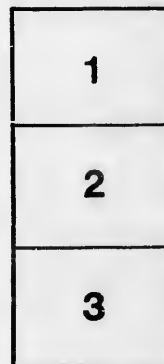
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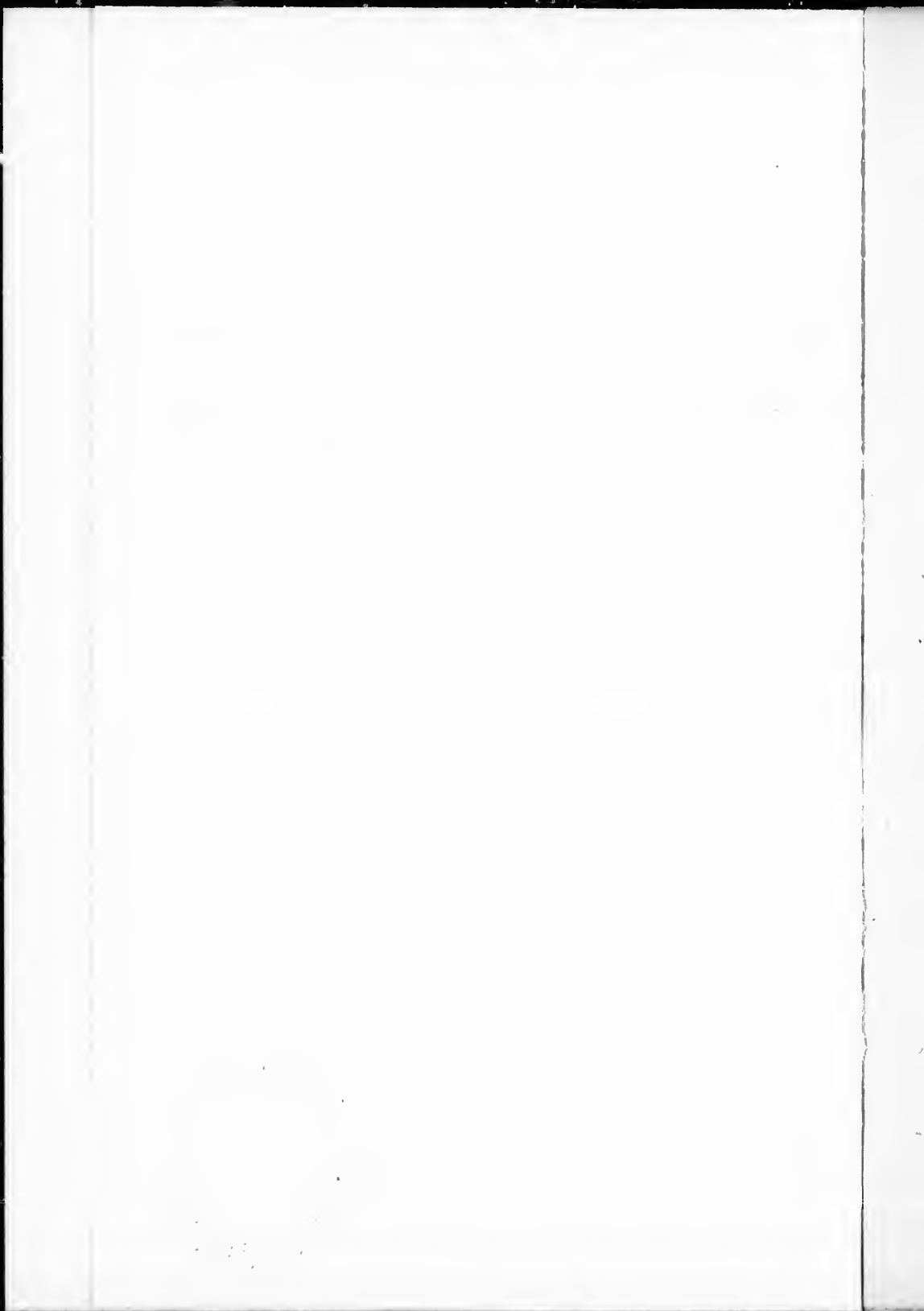
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Mr. WHITE'S SPEECH,  
IN SENATE.

JANUARY 7, 1809.



*Under consideration Mr. Giles' bill for enforcing the embargo laws and the amendments to it, sent up by the house of representatives. Mr. Reed moved to strike out "secretary of the treasury" in the 15th section for the purpose of inserting President of the United States—he supported the motion with a few pertinent remarks, but which were not replied to. When the vote was about to be taken, Mr. White rose and observed,*

MR. PRESIDENT,

JUN 14 1935

I HAVE no hope of the present amendment succeeding, and indeed, I distinctly perceive it is not the intention of the majority to vary the bill in any respect from the form in which it is now presented to us. In this, sir, perhaps, they may be right, for I view the bill myself as so vitally poisonous, so radically corrupt, that I do not believe it is amendable. It is under this solemn impression, I confess more from a sense of duty, than a hope of success, that I now rise to make one other last effort to ward off, if possible, this bold and deadly charge upon the constitution and liberties of this country. For the purpose, therefore, of obtaining another vote of the senate upon the bill itself as well as the amendments, I now move you, that the further consideration of this subject be postponed till the first Monday in November next. I thank God, that it is at least accorded to one branch of the legislature to pass upon this bill in the day time; and to this I must attribute the sudden dumbness that seems to have fallen upon its advocates here; their refusal not only to discuss, but their evident reluctance even to hear any discussion on this subject.

Upon the motion which I have submitted. I consider the bill, as well as the amendments from the other house, open to debate; it was not, however, with this view that I made the motion. I have no wish to talk for the sake of being heard, or occupy the time of the senate without at least a hope of attaining some object. I had not intended to have said a word on this subject, nor will I now enter upon the merits of the bill, my objections lay to every part of it; yet sir, I could not have patience to examine the minute details of a measure, in the prominent points of which I see, concealed, a blow directed at the vital parts of every thing dear to a freeman.... Pass this bill, and the liberties of your country are prostrated. The civil authority is subjected to the military; not only the property, but the personal liberty, nay, the life of every man in the communi-

ty is at the mercy of the executive, and what is worse at the mercy of any instrument he may authorise to call out the military under the pretence of executing the embargo laws. I see in this bill several palpable and glaring violations of the constitution of the U. States which I am sworn to support, I consider it as laying the whole country under military law, as nothing less than a declaration of war on the part of the government against our own citizens. And has it come to this, sir? For the purpose of executing the embargo, are we ready to sacrifice, or at least to hazard every thing dear and valuable? Let me beg gentlemen once more to read the eleventh section of this bill, it enacts "that it shall be lawful for the President of the United States, or such other person as he shall have empowered for that purpose, to employ such part of the land or naval forces, or militia of the United States, or of the territories thereof, as may be judged necessary, in conformity with the provisions of this and other acts respecting the embargo, for the purpose of preventing the illegal departure of any ship or vessel, or of detaining, taking possession of, and keeping in custody, any ship or vessel, or of taking into custody and guarding any specie or articles of domestic growth, produce or manufacture; and also for the purpose of preventing and suppressing any armed or riotous assemblage of persons resisting the custom-house officers in the exercise of their duties, or in any manner opposing the execution of the laws laying an embargo, or otherwise violating or assisting and abetting violations of the same." I am aware, sir, that it may be said we have in our statute books a precedent for this section, and that the fifth section, I think, (for I have no book before me) of a law further to preserve peace within the ports and harbors of the United States, may be resorted to, in justification of it. But it is a precedent only in verbage; the cases are essentially different... the authority there given to the President was for the purpose of preserving peace within our own waters, and could be exercised only against an offending vessel of war of a foreign nation. Is that the present case? Is it like it? No, sir... By this section you delegate to the President, and to his irresponsible agents, uncontrolled authority over all the naval and military forces of the United States now in service and about to be raised; not, give me leave to say, for the purpose of preserving peace... not to be exercised against a foreign enemy, but to be turned against the bosoms of your own citizens. Will freemen submit to this? Let me admit that the act will not be executed in this way; that even this inordinate and dangerous power may be safely confided to our present executive; yet I shudder at the precedent. It is in these days of political calms, and of blind confidence in a favorite, that we are in danger of establishing precedents that in more stormy times may be resorted to, by ambitious and desperate men, to subvert the constitution and liberties of our country. And I contend, sir, that whenever your executive chair shall be filled by a bold and ambitious man; supported by a blind and dominant party in the two houses of congress, and such a man shall wish to play the tyrant, if he first procures a sufficient army to be provided under any pretences,

and can then get delegated to him by congress the powers given in this eleventh section of the bill, his object is accomplished...your constitution and your liberties are at an end...he will establish a southern, a western, an eastern, or any other dynasty he pleases, in this country. And this bill will then be shewn to congress...they will then be told that no danger is to be apprehended from such a grant of power to a President, because similar powers had heretofore been given and no injury had resulted to the country.

I arose, sir, with a promise, not to occupy the time of the senate, and it was then indeed, my only object to move for a postponement of the bill. I have therefore already said much more than I intended, but while I am up, I must be permitted to notice, for a moment the thirteenth section, which is not an original part of the bill, but has been sent to us by the house of representatives. This section authorises the hiring of thirty vessels not exceeding an hundred and thirty tons each, to be armed and equipped for sea, for the purpose of executing the embargo laws. Sir, the man must be blind who cannot see through this...it savours so strongly of the source whence it came that it is impossible to mistake it for a moment...it has the very fish oil about it...it is a Marblehead trick. This is a rider to the famous Marblehead patriotic resolutions read to us some days since by the gentleman from Virginia, (Mr Giles)...These Marblehead patriots not being permitted during the embargo, to export their fish; for the want of some other capital, about to commence trade upon their patriotism, and have sent that to market..... It seems they not only approve of the embargo, but with much patriotic modesty recommend to the government to hire them and their hundred and thirty ton vessels to execute it. It is not impossible but that this thirteenth section was considered and approved of by the same meeting that adopted the resolutions, and is now intended as a governmental premium to buy patriots with. Hire these Marblehead men, sir; arm their vessels, and tell one of them to victual his vessel for a three or six months cruise upon our coast, and to go to sea; my word for it, the next news you have of your patriot, he is in the West-Indies exchanging the pork and flour of the U. States for coffee and sugar for himself. This was the object of the resolutions, this is the concealed object of the section. It is intended to disgrace the government by making them accessories to the violation of their own laws. But, sir, I have another objection to this section. These thirty vessels, in addition to the twelve revenue cutters we have lately provided, and those now in service, will place under the exclusive direction, not of the president of the United States, but of a subordinate officer, the Secretary of the Treasury, more than fifty vessels of war, a larger number than has ever been entrusted to the control of the government itself. And who are to appoint these officers, the President and this Senate? No, sir: The Secretary of the Treasury...He is to be the Marblehead President. We all know how difficult it is to restrain even the young officers commanding our gun-boats, selected and appointed as they are by the President and Senate, from committing acts of



violence and outrage upon our citizens? And what control do you expect the Secretary of the Treasury will be able to assume over these Marblehead marauders, once they are turned loose upon the little coasting commerce that yet remains to our citizens? Sir, I had rather see so many French or British picaroons upon the coast, because they would not be permitted to rob with impunity.



Mr. HILLHOUSE'S SPEECH,  
IN SENATE,

JANUARY 7, 1809.

*On Mr. White's motion to postpone Mr. Giles's bill to enforce the Embargo, with the amendments of the House of Representatives, to the first Monday of November next.*

MR. PRESIDENT,

I SHALL not trespass on the patience of the Senate by repeating any arguments already submitted to their consideration. But it will be remembered that the debate on passing the bill as it went from the Senate, was protracted to a late hour, when both speakers and hearers were much fatigued, and it became impossible to consider every point. I will therefore now take the liberty of noticing the precedents upon which the gentleman from Virginia (Mr. Giles) so confidently relies to justify the principles of this bill.

The first is that clause in one of the embargo acts, which gives to the President of the United States a discretionary power to suspend the embargo "in whole or in part;" which was indeed an extraordinary power, and nothing short of committing into his hands the power of involving the country in war. The gentleman ought further to have stated, that it was opposed at the time on that ground; and that the votes of gentlemen opposed to this bill are recorded on the journals against it. Who gave to the Executive that extraordinary power? It was the like overwhelming majority that laid the embargo, and would now enforce it by the arbitrary provisions con-

tained in this bill. It is indeed extraordinary, very extraordinary, that to justify *an arbitrary and unwarrantable grant of power*, gentlemen should quote a precedent of a *like nature*, of their own making.

An act of March 3d, 1807, authorising the President of the U. State to use military force to remove from public lands, persons attempting to make settlements thereon, is also relied on to justify the principles of this bill. But the gentleman from Virginia will find by the journals of the Senate, that an act making provision for carrying into execution an Indian treaty, was, at a previous session, rejected, because it contained a like arbitrary and unwarrantable provision. The act as stated by that gentleman, was afterwards passed, not however without a strenuous opposition; the votes were 17 to 15, as appears by the yeas and nays.\* My vote was against that act; as I hope it will be against every act containing like arbitrary and oppressive provisions. The gentleman from Virginia advocated and voted for that act; as he has done for others containing grants of extraordinary power to the Executive. Formerly that gentleman's voice was one of the loudest, and I think I have heard none louder, in proclaiming *his love and adoration for the people*; but now that he has got into the saddle, he, like many others, who have acquired power in the *same way*, is for riding on the necks of the people, and for exercising power in an arbitrary and oppressive manner.

I shall next notice the law of March 3d, 1805, and a law containing a like provision, passed June 5th, 1794. As the gentleman from Virginia seems to attach some importance to his precedents, from the circumstance of my having in some instances voted for them, I do not hesitate to declare, that I voted for the law of 1805, and it is probable I did also for that of 1794: as I could have no objection to a law which was necessary to preserve *peace*, and prevent *insults* to our government, or the violation of the laws within our ports and harbours, and on waters within our own jurisdiction, by foreign armed ships, or vessels fitting out with hostile views against any power with which we were in amity. The military force authorised by those laws, would in no instance be employed on the land, and against our own citizens; except to prevent the carrying on a military expedition or enterprize against such foreign power. So cautious were the administrators of the general government of calling in the aid of the military to enforce the laws, that no express power was given to the President of the United States, by any act of Congress, to employ any part of the standing army or naval force, until, under the present administration, the law mentioned by the gentleman from Virginia, of March 3d, 1807 (in my opinion a very proper law) was passed, giving to the President a power, in all cases where he might call forth the militia for the purpose of suppressing insurrections, or of causing the laws to be executed, to employ, for the same purpose, such part of the land and naval force of the United States, as he may judge necessary; "*having first observed all the prerequisites of the law in that respect.*" In the two last lines of this law, are a few words of *great significance and import*... "hav-

ing first observed all the prerequisites of the law." The *military* is not to take the lead, as in the present bill, but is to come in aid of, and be subordinate to the civil power. That it may appear on our journals, that no effort consistent with the rules of the Senate, has been omitted to prevent the passage of this fatal bill, I am glad the gentleman from Delaware (Mr. White) has brought forward his motion, for a postponement of the bill to the first Monday of November next. The amendments from the House of Representatives, have not in the least reconciled me to the bill; one only is of any value. That offered to the 7th section, is a *mockery* of justice, an *insult* to the understandings of the American people. By the original bill as it passed the Senate, "neither capture, distress, nor any other accident whatever, shall be pleaded or given in evidence." The amendment proposes to add, "unless such capture shall be expressly proved to have been hostile, and such distress or accident occasioned by no negligence or deviation, nor unless such vessel shall have been from the commencement of the voyage, wholly navigated by a master, mate or mates, mariners and crew, all of whom shall be citizens of the United States, nor unless such mate or mates, mariners and crew, shall all, if living (and the proof of their death shall lie on the defendant) be produced on the trial, and sworn as competent witnesses; nor unless such master, mate or mates, mariners and crew, shall have signed a shipping paper in due form of law, and a copy thereof designating specially the master, mate or mates, mariners and crew, and their permanent places of residence, shall have been lodged with the collector of the port, to whom the bond aforesaid shall have been given before the commencement of the voyage, and subscribed and sworn to by the master before such collector; and any master who shall falsely, wilfully and corruptly swear as to the facts contained in such copy, shall, on conviction, suffer the pains and penalties of perjury."... The impracticability and absurdity of this amendment, will be best exemplified by a plain case.... A vessel bound from Baltimore to Charleston, South Carolina, say the regular packet, takes on board flour and other articles to the value, including vessel, of 20,000 dollars, and twenty members of Congress, who must be presumed to be men of character. On the passage, in a storm, to save the vessel and the lives of the crew and passengers, part of the cargo is thrown overboard. On the arrival at Charleston, every remaining article is fairly landed, and a certificate obtained, which, with the testimony of those twenty members of Congress, to prove that every article not contained in the certificate, was in fact thrown into the sea, are offered to exonerate the bondsmen from the penalty of the bond, which cannot be less than \$120,000. By this amendment the evidence cannot be admitted; but judgement must be rendered for the whole amount of the bond; unless, among other conditions, difficult and embarrassing, "the mate or mates, mariners and crew, shall all, if living (and the proof of their death shall be on the defendant) be produced on the trial and sworn as *competent* witnesses." It is hardly a supposable case that the bondsmen residing at Balti-

more, where the suit must be commenced, should, after the lapse of two months before which no suit can be brought, be able to bring from Charleston and into court, the mate or mates and every one of the mariners and crew...some one may have been taken out on the passage by an armed vessel of a foreign nation; or after the arrival at Charleston, it would be marvelous indeed if some one or more of the crew had not within two months shipped on board some other vessel, or gone to parts unknown to the bondsmen. In the bill there is no provision to enable the master or bondsmen to hold the mate, mariners and crew, in custody until a trial can be had; they can not even summon them, until a suit is commenced. In case of a hostile capture most of the mariners and crew would be carried away to a foreign country; and it would be impossible for the bondsmen to have them in court.

Having offered my sentiments on the various amendments from the House of Representatives, and the amendments offered in the Senate to those amendments as they were severally under consideration, I shall now close with a few remarks on the proposed new section for hiring, arming and employing thirty vessels not exceeding one hundred and thirty tons each for enforcing the laws of the U. States on the sea coast, and to be employed under the direction of the Secretary of the Treasury. The Constitution has placed the military and naval force of the United States under the direction of the President, who is to "take care that the laws be faithfully executed." This section places thirty vessels, a naval force of no small import, under the direction of the Secretary of the Treasury for enforcing the laws....Even the *Revenue Cutters*, which from the circumstance of their commanders being deemed and by law declared to be *officers of the customs*, fall under the direction of the Secretary of the Treasury, under whose superintendence the law has placed the collection of the revenue, even those revenue cutters when otherwise employed than in the collection of the revenue, are not permitted to remain under the direction of the Secretary of the Treasury, who of all the officers of government is the most improper to have the direction of the military and naval force to be employed in executing the embargo; for to him alone is confided the power of mitigating the rigor of the several acts, and of remitting penalties and forfeitures. There is a manifest impropriety in making the same person both *Judge* and *Executioner*. The gentleman from Virginia says, we have heretofore reproached the friends of the administration with the want of *energy*, and complained of them for relying on *proclamations*, *paper resolutions*, and *legislative acts*... and now that something is proposed that has in it the appearance of *energy*, we are equally clamorous in heaping reproach upon them. Sir, it is the *inversion* of the proper order of things of which we complain. The administration and their friends have been making proclamations, paper resolutions, and legislative acts to be aimed at foreign nations, against whom they are *unavailing*; whereas, in regard to our own citizens, aided by the Marshal and *posse commitatus*, they might be effectual. And to complete this *inversion* the same

administration and their friends have unnecessarily, and in my apprehension wantonly, directed against our own citizens the bayonet, the military and naval force of our country, which might be efficient against foreign aggression. It is for adopting this strange, this unaccountable policy, that we are dissatisfied.

I have opposed the bill in every stage of its progress, and used every exertion in my power to prevent its passage: I shall now only ask, that the question may be taken by the yeas and nays, that I may once more record my name on the journals against a measure, which, if acquiesced in, may prove fatal to the liberties of my country.

**\*NOTE.**

On the question, shall the bill pass? It was determined in the affirmative...Yeas 17...Nays 15.

Those who voted in the affirmative are,

Messrs. Baldwin,	Messrs. Milledge,
Bradley,	Mitchell,
Condit,	Moore,
Fenner.	Plumer,
Guillard,	Smith, of Maryland,
Giles,	Smith, of New-York,
Howland,	Smith, of Tennessee,
Kitchel,	Turner.
Maclay,	

Those who voted in the negative are,

Messrs. Adams,	Messrs. Smith, of Ohio,
Bayard,	Smith, of Vermont,
Clay,	Stone,
Gilman,	Thruston,
Hillhouse,	Tracy,
Logan,	White,
Pickering,	Worthington.
Reed,	

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