Twitter Thread by Chad Pergram



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1) Washington is staring at the potential of a government shutdown Monday night. This is grim. Congress has approved four temporary spending bills since the end of the government's fiscal year in September to prevent a shutdown.

2) The most recent stopgap measure was a seven day plan this week. Mbrs knew that the COVID/coronavirus bill was so large, it would take several days to send to the White House. Yes, that bill funds the government until next fall. But it isn't law until the President signs it.

3) So, the most recent Band-Aid measure was the equivalent of fiscal grout. The House will approve another emergency measure on Monday. But there's doubt the Senate will do anything before then. And, it's unclear if President Trump would sign anything. That means a shutdown.

4) A shutdown is always dangerous. It could be more dangerous during a pandemic. And it's unclear if a shutdown could have devastating impacts on distributing the vaccine.

5) It takes a two-thirds vote of both the House and Senate to override a presidential veto. With 359 House yeas and 92 Senate yeas on the COVID/omnibus bill, both bodies have way more than a supermajority to override a presidential veto.

6) But note that President Trump didn't directly threaten to veto the coronavirus/omnibus bill. He didn't have to. The President could prevent the package from becoming law, via a "pocket veto."

7) Pocket vetoes are very rare. And you won't find the term in the Constitution. Congress must find itself in the proper parliamentary posture for this possibility to be in play. But we could very well be in those circumstances now.

8) Article I, Section 7 of the Constitution says the President has ten days (Sundays excluded) to either sign or veto a bill. Otherwise, the bill magically becomes law, sans signature. The COVID/omnibus bill is still not at the White House.

9) Here's where the pocket veto comes into play:

The latest the current Congressional session can end is 11:59:59 am on January 3.

10) That is the drop-dead time for the 116th Congress. A President may in effect “veto” a bill by keeping it in his “pocket” and not signing it if Congress passes it too close to a Congressional adjournment.

11) Under the Constitution, the new Congress must begin at noon et on January 3.

In other words, Congress needed to get the President the bill by December 23 to avoid a pocket veto. That’s the “ten-day/Sundays excluded” window.

12) That would force the President to either sign or veto the bill. And, if he vetoed it, Congress could try to override.

But Congress adjourning within that “ten day/Sundays excluded” window effectively neuters the possibility of an override attempt.

13) The President gets the bill and holds onto it. He can run out the clock on the Congressional session, blocking any potential override attempt. The bill just goes poof. It does not carry over into the 117th Congress.

14) If President Trump neither signs nor vetoes the coronavirus/spending bill at this stage, it’s like it never happened.

It’s unclear if the President’s proposed changes to the bill could pass. And, don’t forget that Congress has some responsibility in all of this, too.

15) Congress thought it had a deal with President Trump in 2018 to avoid a shutdown. It didn’t. Perhaps wiser heads should have anticipated the pocket veto scenario. Congress dithered well into December, trying to secure a final COVID package.

16) An earlier resolution would have given Congress recourse via a veto override. Now, there’s none.

17) This may be one of the worst Christmas scenarios to ever unfold on Capitol Hill. And there have been some doozies. A Senate vote on Obamacare on Christmas Eve morning in 2009.

18) The House impeached President Clinton just days before Christmas in 1998. The House reprised that performance days before Christmas in 2019. We’ve had Congress return to session between Christmas and New Year’s.

19) December is always a torrent of action in Congress. It’s nothing but late-night negotiations, weekend sessions and chaos. But this year's fury may have ultimately produced nothing at a time of crisis.