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Item Veto and Expanded Impoundment Proposals

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Item Veto and Expanded Impoundment Proposals

SUMMARY

In recent years, conflicting budget priorities have accentuated the institutional tensions between the executive and legislative branches inherent in the federal budget process. President Bush, like his recent predecessors, has called for an item veto, or possibly expanded impoundment authority, to provide him with greater control over federal spending.

Congress exercises its "power of the purse" by enacting appropriations measures, but the President has broad authority as chief executive in the implementation stage of the budget process. It is at this stage that the monies provided by Congress are actually spent by the federal government. Impoundment, whereby the President withholds or delays the spending of appropriated funds, provides one important mechanism for budgetary control during the execution stage, but Congress retains oversight responsibilities at this stage as well.

The Impoundment Control Act of 1974 (Title X of the Congressional Budget and Impoundment Control Act, P.L. 93-344), established two categories of impoundments: deferrals, or temporary delays in funding availability; and rescissions, or permanent cancellation of budget authority. With a rescission, the funds must be made available for obligation unless both houses of Congress take action to approve the President's rescission request within 45 days of "continuous session."

Consideration of impoundment reform increasingly became joined with that of an item veto for the President. Many who originally favored an item veto constitutional amendment came to embrace expanded rescission authority for the President as a functionally similar mechanism achievable more easily by statutory change.

The Line Item Veto Act was signed into law on April 9, 1996 (P.L. 104-130), and it became effective January 1, 1997. Key provisions allowed the President to cancel any dollar amount of discretionary budget authority provided in an appropriation, any item of new direct spending, or certain limited tax benefits contained in any law. After Congress had been notified of the cancellations in a special message, a period for expedited congressional review of the proposal followed.

On August 11, 1997, President Clinton first invoked the new authority; 81 more cancellations followed. On February 12, 1998, the Line Item Veto Act was held unconstitutional (for the second time) in a district court ruling, and on June 25, 1998, the Supreme Court affirmed that decision. In the case of *Clinton v. City of New York*, the Court held the law unconstitutional on grounds that it violates the presentment clause; in order to grant the President line-item veto authority a constitutional amendment is needed (according to the majority opinion).

Measures seeking to provide a constitutional alternative to the Line Item Veto Act have been introduced in the 106th, 107th, 108th, and 109th Congresses. President Bush has endorsed the effort to restore the President's line-item veto authority.

Most Recent Developments

On July 14, 2006, the Senate Budget Committee filed the report (S.Rept. 109-283) to accompany S. 3521, an omnibus budget process reform measure containing expedited rescission provisions in Title I (named the Legislative Line Item Veto Act). On June 27, 2006, after a meeting with senators at the White House to discuss line item veto legislation, President Bush called upon the Senate to act quickly and approve such a measure. On June 22, 2006, the House passed H.R. 4890, the Legislative Line Item Veto Act of 2006, by vote of 247-172.

Background and Analysis

Debate about the appropriate relationship between the branches in the federal budget process seems endemic, given the constitutional necessity of shared power in this sphere. Under the Constitution, Congress possesses the "power of the purse" ("No money shall be drawn from the Treasury but in consequence of appropriations made by law"), but the President enjoys broad authority as the chief executive who "shall take care that the laws be faithfully executed."

The Constitution is silent concerning the specifics of a budget system for the federal government. Informal procedures sufficed for many years. The Budget and Accounting Act of 1921 (P.L. 67-14) for the first time required the President to submit a consolidated budget recommendation to Congress. To assist in this task, the act also created a new agency, the Bureau of the Budget, "to assemble, correlate, revise, reduce, or increase the estimates of the several departments or establishments." In 1970, the budget agency was reconstituted as the Office of Management and Budget (OMB). The OMB also plays an important role later in the budget process when funds are actually spent as appropriations laws are implemented. Impoundment of funds by the President represents an important component in this stage of budget execution.

Brief History of Impoundment

Impoundment includes any executive action to withhold or delay the spending of appropriated funds. One useful distinction among impoundment actions, which received statutory recognition in the 1974 Impoundment Control Act, focuses on duration, whether the President's intent is permanent cancellation of the funds in question (rescission) or merely a temporary delay in availability (deferral).

Another useful contrast distinguishes presidential deferrals for routine administrative reasons from deferrals for policy purposes. Virtually all Presidents have impounded funds in a routine manner as an exercise of executive discretion to accomplish efficiency in management. The creation of budgetary reserves as a part of the apportionment process required by the Antideficiency Acts (31 U.S.C. 1511-1519) provided formal structure for such routine impoundments, which originated with an administrative regulation issued in 1921 by the Bureau of the Budget and then received a statutory base in 1950. Impoundments for policy reasons, such as opposition to a particular program or a general desire to reduce spending, whether short-term or permanent, have proved far more controversial.

Controversies Increase

In the 1950s and 1960s, disputes over the impoundment authority resulted from the refusal of successive Presidents to fund certain weapons systems to the full extent authorized by Congress. These confrontations between the President and Congress revolved around the constitutional role of Commander-in-Chief and tended to focus on relatively narrow issues of weapons procurement. President Johnson made broader use of his power to impound by ordering the deferral of billions of dollars of spending during the Vietnam war in an effort to restrain inflationary pressures in the economy. While some impoundments during these periods were motivated by policy concerns, they typically involved temporary spending delays, with the President acting in consultation with congressional leaders, so that a protracted confrontation between the branches was avoided.

Conflict over the use of impoundments greatly increased during the Nixon Administration and eventually involved the courts as well as Congress and the President. In the 92nd and 93rd Congresses (1971-1974), the confrontation intensified as the President sought to employ the tool of impoundment to reorder national priorities and alter programs previously approved by Congress. Following President Nixon's reelection in 1972, the Administration announced major new impoundment actions affecting a variety of domestic programs. For example, a moratorium was imposed on subsidized housing programs, community development activities were suspended, and disaster assistance was reduced. Several farm programs were likewise targeted for elimination. Perhaps the most controversial of the Nixon impoundments involved the Clean Water Act funds. Court challenges eventually reached the Supreme Court, which in early 1975 decided *Train v. City of New York* (420 U.S. 35 (1975)), on narrower grounds than the extent of the President's impoundment authority.

Impoundment Control Act of 1974

During these impoundment conflicts of the Nixon years, Congress responded not only with ad hoc efforts to restore individual programs, but also with gradually more restrictive appropriations language. Arguably, the most authoritative response was the enactment of the Impoundment Control Act (ICA), Title X of the Congressional Budget and Impoundment Control Act of 1974. The ICA became effective upon signing on July 12, 1974 (88 Stat. 332). As a result of a compromise in conference, the ICA differentiated deferrals, or temporary delays in funding availability, from rescissions, or permanent cancellations of designated budget authority, with different procedures for congressional review and control of the two types of impoundment. The 1974 law also required the President to inform Congress of all proposed rescissions and deferrals and to submit specified information regarding each. The ICA further required the Comptroller General to oversee executive compliance with the law and to notify Congress if the President failed to report an impoundment or improperly classified an action.

The original language allowed a deferral to remain in effect for the period proposed by the President (not to exceed beyond the end of the fiscal year so as to become a de facto rescission) unless either the House or the Senate took action to disapprove it. Such a procedure, known as a one-house legislative veto, was found unconstitutional by the Supreme Court in *I.N.S. v. Chadha* (462 U.S. 919 (1983)). In May of 1986 a federal district court ruled that the President's deferral authority under the ICA was inseverable from the one-house veto provision and hence was null; the lower court decision was affirmed on appeal (*City of New Haven v. United States,* 809 F.2d 900, D.C. Cir. 1987).

In the case of a rescission, the ICA provided that the funds must be made available for obligation unless both houses of Congress take action to approve the rescission request within 45 days of "continuous session" (recesses of more than three days not counted). In practice, this usually means that funds proposed for rescission not approved by Congress must be made available for obligation after about 60 calendar days, although the period can extend to 75 days or longer. Congress may approve all or only a portion of the rescission request. Congress may also choose after the 45-day period to rescind funds previously requested for rescission by the President. Congress does rescind funds never proposed for rescission by the President, but such action is not subject to the ICA procedures.

The ICA establishes no procedures for congressional disapproval of a rescission request during the 45-day period. However, some Administrations have voluntarily followed a policy of releasing funds before the expiration of the review period, if either the House or the Senate authoritatively indicates that it does not intend to approve the rescission.

In the fall of 1987, as a component of legislation to raise the limit on the public debt (P.L. 100-119), Congress enacted several budget process reforms. Section 207 prohibited the practice, sometimes used by Presidents when Congress failed to act on a rescission proposal within the allotted period, of submitting a new rescission proposal covering identical or very similar matter. By using such resubmissions, the President might continue to tie up funds even though Congress, by its inaction, had already rejected virtually the same proposal. The prohibition against such seriatim rescission proposals (contained in the 1987 law) applies for the duration of the appropriation, so that it may remain in effect for two or more fiscal years. Section 206 of P.L. 109-119 served to codify the decision in the *New Haven* case, allowing deferrals to provide for contingencies, to achieve savings made possible through changes in requirements or efficiency of operations, or as provided in statute. The ICA as amended no longer sanctions policy deferrals.

Alternative of an Item Veto

The U.S. Constitution provides that the President may either sign a measure into law or veto it in its entirety. However, constitutions in 43 states provide for an item veto (usually confined to appropriation bills), allowing the Governor to eliminate discrete provisions in legislation presented for signature. Ten states allow the governor to reduce amounts as well as eliminate items, and seven States have an "amendatory" veto, permitting the governor to return legislation with specific suggestions for change.

The first proposal to provide the President with an item veto was introduced in 1876. President Grant endorsed the mechanism, in response to the growing practice in Congress of attaching "riders," or provisions altering permanent law, to appropriations bills.

Over the years many bills and resolutions (mainly proposed constitutional amendments) have been introduced, but action in Congress on such item veto proposals, beyond an occasional hearing, has been limited. Contemporary proposals for item veto are usually confined to bills containing spending authority, although not necessarily limited to items of appropriation.

Expanded Rescission Proposals and Enactment of the Line Item Veto Act of 1996

Consideration of impoundment reform became increasingly joined with the idea of an item veto. During the Ford and Carter Administrations, the provisions of the ICA proved relatively noncontroversial. Dissatisfaction increased during the Reagan Administration. President Reagan, in his 1984 State of the Union message, specifically called for a constitutional amendment to grant item veto authority, which he considered to be a "powerful tool" while Governor of California. In his last two budget messages, President Reagan included enhanced rescission authority among his budget process reform proposals. President George H. W. Bush also endorsed the idea of expanded rescission authority and an item veto for the President. During the 1992 campaign, then-Governor Bill Clinton advocated a presidential item veto, and he subsequently endorsed enhanced rescission authority. During the 2000 campaign George W. Bush went on record in support of expanded rescission authority, and as President, he has repeatedly called for some kind of item veto authority.

Instead of granting true item veto authority to the President via a constitutional amendment, efforts came to focus on modifying the framework for congressional review of rescissions by the President. Legislative activity directed toward granting the President expanded rescission authority extended over several years.

In examining impoundment reform legislation, the distinction often has been drawn between "enhanced" and "expedited" rescission proposals. With enhanced rescission, the intent is to reverse the "burden of action" and thereby create a presumption favoring the President. Such proposals usually stipulate that budget authority identified in a rescission message from the President is to be permanently canceled unless Congress acts to disapprove the request within a prescribed period. In contrast, the expedited rescission approach focuses on procedural changes in Congress to require an up or down vote on certain rescission requests from the President. Such measures contain expedited procedures to ensure prompt introduction of a measure to approve the rescission, fast report by committee or automatic discharge, special limits on floor amendments and debate, and so on. Under expedited rescission, congressional approval would still be necessary to cancel the funding, but it would become difficult to ignore proposed rescissions and hence to reject them by inaction.

Action on an expanded rescission measure commenced early in the 104th Congress. This reflected the results of the November midterm elections, which returned a Republican majority to both the House and Senate. On September 28, 1994, many House Republican Members and candidates signed the *Republican Contract with America*, which pledged action on a number of measures, including a "legislative line item veto," within the first 100 days, should a Republican majority be elected.

House floor consideration of H.R. 2 commenced on February 2, 1995. The House debated the measure for three days, during which time six amendments were approved and 11 amendments were rejected, along with a motion to recommit with instructions. On February 6, 1995, the House passed H.R. 2, as amended, by vote of 294-134. The date of passage had special meaning, as it was the 84th birthday of former President Ronald Reagan, long a supporter of an item veto for the President.

In the Senate, general debate on the subject of an item veto began on March 16, 1995. The "Republican compromise" substitute, incorporating the separate enrollment approach, appeared as Dole Amendment No. 347 on March 20. Floor debate on S. 4 continued on March 21-23. Eight amendments were adopted by voice vote, including the Dole Amendment itself, providing for separate enrollment for presentation to the President of each item of any appropriation and authorization bill or resolution providing direct spending or targeted tax benefits. The Senate ultimately passed S. 4, with the Dole Amendment in the nature of a substitute and additional amendments, on March 23, 1995, by vote of 69-29.

The significant differences between the House-passed H.R. 2 (enhanced rescission approach), and the Senate-passed S. 4 (separate enrollment approach), needed to be resolved in conference. On May 17, 1995, the House passed S. 4, after agreeing to strike all after the enacting clause of Senate-passed S. 4 and insert in lieu the language of the House-passed H.R. 2. The Senate agreed to a conference and named eighteen conferees on June 20. On September 7, 1995, the Speaker appointed eight House conferees, after a motion to instruct conferees to make the bill applicable to current and subsequent fiscal year appropriation measures was agreed to by voice vote.

The conference committee held an initial meeting on September 27, 1995, at which opening statements were presented, and Representative Clinger was chosen as conference chairman. The Members present then instructed staff to explore alternatives for reconciling the two versions. The conferees met again on November 8, 1996, at which time the House Republicans offered a compromise package.

In his State of the Union message on January 23, 1996, President Clinton urged Congress to complete action on a line-item veto measure, but negotiations apparently remained stalled. Following return from the congressional recess in February, the pace of conference activity appeared to pick up considerably. On March 14, 1996, Republican negotiators on the conference committee reported that they had reached agreement on a compromise version of S. 4, and the conference report (H.Rept. 104-491) was filed on March 21, 1996. Although there was no public conference meeting for approval, the Republicans obtained the signatures of a majority of conferees, thus readying the conference report for final action.

The conference substitute reflected compromise between the House and Senate versions, although the enhanced rescission approach of H.R. 2 rather than the separate enrollment framework of S. 4 was chosen. As in the November compromise package, new direct spending and certain targeted tax benefits were subject to the new authority of the President as well as items of discretionary spending in appropriation laws. The measure was to take effect on January 1, 1997, absent an earlier balanced budget agreement, and would terminate on January 1, 2005. The Senate approved the conference substitute on March 27, 1996, by vote of 69-31, and the House followed suit on March 28, 1996, by vote of 232-177. President Clinton signed S. 4 on April 9, 1996 (P.L. 104-130).

The Line Item Veto Act of 1996 amended the Congressional Budget and Impoundment Control Act of 1974 (P.L. 93-344), to give the President "enhanced rescission authority" to cancel certain items in appropriations and entitlement measures and also certain narrowly applicable tax breaks. The act authorized the President to cancel in whole any dollar amount of discretionary budget authority (appropriations), any item of new direct spending (entitlement), or limited tax benefits with specified characteristics, contained in a bill otherwise signed into law. The cancellation was to take effect upon receipt in the House and Senate of a special notification message. "Cancellation" in this context meant to prevent from having legal force; in other words, provisions canceled never were to become effective unless Congress reversed the action of the President by enacting a "disapproval bill." The President was only to exercise the cancellation authority if he determined that such cancellation would reduce the federal budget deficit and would not impair essential government functions or harm the national interest; and then notified the Congress in a special message of any such cancellation within 5 calendar days after enactment of the law providing such amount, item, or benefit. The act provided 30 days for the expedited congressional consideration of disapproval bills to reverse the cancellations contained in the special messages received from the President. Detailed provisions for expedited consideration of the disapproval bill in the House and Senate were outlined. The Line Item Veto Act also contained a "lockbox" procedure to help ensure that any savings from cancellations go toward deficit reduction. This was to be accomplished by binding the new procedures to existing requirements relating to discretionary spending limits and the PAYGO requirements of the Budget Enforcement Act of 1990. To facilitate judicial review, the act provided for (1) expedited review by the U.S. District Court for the District of Columbia of an action brought by a Member of Congress or an adversely affected individual on the ground that any provision of this act violates the Constitution; (2) review of an order of such Court by appeal directly to the Supreme Court; and (3) expedited disposition of such matter by the Supreme Court. The act became effective on January 1, 1997, but was subsequently overturned by the Supreme Court on June 25, 1998 (*Clinton v. New York City*).

Developments During the 105th Congress

During 1997, the first year with the Line Item Veto Act in effect, several noteworthy developments involved judicial challenges and the first use of the new authority by President Clinton. In Congress, disapproval bills to overturn the cancellations by the President were introduced, along with alternative measures for providing the President with expanded rescission authority, bills to repeal the Line Item Veto Act, and even a bill to correct an apparent "loophole" in the original Act. In 1998, there were additional court challenges, with the Supreme Court eventually striking down the new law as unconstitutional.

Initial Court Decisions

On January 2, 1997, the day after the Line Item Veto Act went into effect, another suit challenging its constitutionality was filed in the same court (referred to as *Byrd v. Raines*). The plaintiffs, led by Senator Robert Byrd, now included six Members of Congress: Senators Byrd, Mark Hatfield, Daniel Moynihan, and Carl Levin, and Representatives David Skaggs and Henry Waxman. Office of Management and Budget Director Franklin Raines and Secretary of the Treasury Robert Rubin were named as defendants, because of their responsibilities for implementing key aspects of the law. The plaintiffs contended that the act violated the constitutional requirements of bicameral passage and presentment "by granting to the President, acting alone, the authority to 'cancel' and thus repeal provisions of federal law."

On March 21, 1997, U.S. District Court Judge Thomas Penfield Jackson heard oral arguments in the case of *Byrd v. Raines*. Less than three weeks later, on April 10, Judge

Jackson ruled that the Line Item Veto Act was unconstitutional because it violated provisions of the Presentment Clause in the Constitution (Article I, Section 7, Cl. 2). His ruling found that compared with permissible delegations in the past, "The Line Item Veto Act, in contrast, hands off to the President authority over fundamental legislative choices." In so doing, "Congress has turned the constitutional division of responsibilities for legislating on its head."

As already noted, the Line Item Veto Act provided for expedited judicial review, allowing for appeal of a district court decision directly to the Supreme Court. Such a request was filed, and on April 23, 1997, the Supreme Court agreed to an accelerated hearing. The Court heard oral arguments on May 27 and announced its decision in *Raines v. Byrd* on June 26, 1997. In a 7-2 decision, the Court held that the Members of Congress challenging the law lacked legal standing, so the judgment of the lower court (finding the act unconstitutional) was put aside and the Line Item Veto Act remained in force. However, the Supreme Court confined its decision to the technical issue of jurisdiction and refrained from considering the underlying merits of the case, that is, whether the Line Item Veto Act was unconstitutional.

The Line Item Veto in Action

On August 11, 1997, President Clinton exercised his new veto authority for the first time by transmitting two special messages to Congress, reporting his cancellation of two limited tax benefit provisions in the Taxpayer Relief Act of 1997 (P.L. 105-34), and one item of direct spending in the Balanced Budget Act of 1997 (P.L. 105-33). Both measures had been signed into law on August 5, 1997. The law provided a period of 30 calendar days of session after receipt of a special message (only days when both the House and Senate are in session count) for Congress to consider a disapproval bill under expedited procedures.

Upon reconvening in early September, Congress responded quickly to the President's cancellations, with the introduction of four disapproval bills. S. 1144 and H.R. 2436 sought to disapprove the cancellation of the direct spending provision in P.L. 105-33, transmitted by the President on August 11, 1997, and numbered 97-3, regarding Medicaid funding in New York. S. 1157 and H.R. 2444 sought to disapprove the cancellations of two limited tax benefit provisions in P.L. 105-34, transmitted by the President on August 11, 1997, and numbered 97-1 and 97-2. The first provision dealt with income sheltering in foreign countries by financial services companies, and the second involved tax deferrals on gains from the sales of agricultural processing facilities to farmer cooperatives. A compromise was apparently reached between the White House and congressional leaders on the canceled tax benefit provisions; a new bill (H.R. 2513) restoring the canceled provisions, with some modifications, was introduced by the Chairman of the Ways and Means Committee on September 23, 1997. On November 8, 1997, the House approved H.R. 2513 by voice vote under suspension of the rules; H.R. 2444 (the disapproval bill) was tabled.

On October 6, 1997, President Clinton exercised the new authority to veto items in appropriations bills by cancelling 38 projects contained in the FY1998 Military Construction Appropriations Act (P.L. 105-45). (See CRS Report 97-210 for further discussion of the specific cancellations.) On October 24, the Senate Appropriations Committee approved S. 1292, with an amendment to exclude two more of the projects from the disapproval bill, reflecting the wishes of Senators from the states involved; there was no written report. On

October 30, the Senate passed S. 1292, after the committee amendment was withdrawn, disapproving 36 of the 38 cancellations, by vote of 69-30. On November 8, 1997, the House passed its version of the disapproval bill, H.R. 2631 (covering all 38 of the cancellations originally in the President's message), by vote of 352-64. On November 9, the Senate passed H.R. 2631 by unanimous consent, precluding the need for conference action, and clearing the disapproval measure for the President. On November 13, 1997, the President vetoed H.R. 2631, the first disapproval bill to reach his desk under the provisions of the 1996 law. The House voted to override on February 5, 1998 (347-69), and the Senate did likewise on February 25, 1998 (78-20): so the disapproval bill was enacted over the President's veto (P.L. 105-159) . (Cancellations under the Line Item Veto Act became effective on the date the special message from the President was received by the House and Senate, but the cancellations became null and void if a disapproval bill was enacted.)

On October 14, 1997, President Clinton vetoed 13 projects in the Department of Defense Appropriations (see CRS Report 97-205). On October 16, 1997, he used the cancellation authority on a provision in the Treasury and General Government Appropriations relating to pension systems for federal employees (see CRS Report 97-202). On October 17, 1997, the President applied his veto to eight more projects, this time in the Energy and Water Appropriations Act (see CRS Report 97-207). On November 1, 1997, President Clinton exercised his line-item veto authority in two appropriations acts, canceling seven projects in the VA/HUD measure and three projects in the Transportation Act. On November 20, 1997, the President canceled two projects from Interior and five from the Agriculture Appropriations Act. On December 2, 1997, President Clinton exercised his line-item veto authority for a final time in one of the 13 annual appropriations acts for FY1998, canceling a project in the Commerce-Justice-State measure. This action brought the total of special messages in 1997 to 11, and the total cancellations under the new law to 82. On November 13, 1997, President Clinton vetoed H.R. 2631, disapproving the 38 cancellations in the Military Construction Appropriations; on February 25, 1998, the bill was enacted over the President's veto (P.L. 105-159), when the Senate voted 78-20 for the override; previously, on February 5, 1998, the House agreed to the override (347-69).

More Court Challenges

Once the President used the new authority, other cases were expected to be brought by parties who could more easily establish standing, having suffered ill effects directly as a result of the cancellations. On October 16, 1997, two separate cases challenging the Line Item Veto Act were initiated. A complaint was filed by the City of New York and other interested parties seeking to overturn the cancellation of the new direct spending provision affecting Medicaid funding in the Balanced Budget Act in the U.S. District Court for the District of Columbia (case number 1:97CV02393). On the very same day, the National Treasury Employees Union (who had brought the first suit challenging the new law in the spring of 1996, even before it became effective), filed another suit in district court, seeking to overturn the veto of the federal pension provision in the Treasury Appropriations Act (case number 1:97CV02399). On October 21, 1997, a third case, seeking to overturn the cancellation of the limited tax benefit affecting farm cooperatives, was filed in the district court by Snake River Potato Growers, Inc. (case number 1:97CV02463). On October 24, 1997, the cases of the three suits challenging the Line Item Veto Act, were combined, placed in the random assignment pool, and ultimately reassigned to Judge Thomas Hogan. On October 28, 1997, NTEU filed an amended complaint, challenging the specific application of the cancellation authority (as well as the constitutionality of the law). A hearing on the consolidated case was set for January 14, 1998.

Meanwhile, on December 19, 1997, the Clinton Administration conceded that the President's cancellation in October of the pension switch provision exceeded the authority conveyed in the Line Item Veto Act. On January 6, 1998, Judge Hogan approved a negotiated settlement in the suit between the Justice Department and the National Treasury Employees Union and ordered that the previously canceled provision in the Treasury appropriations for an open season to switch pension plans be reinstated. The order found that the President lacked authority to make this cancellation, and so it was "invalid and without legal force and effect." The NTEU's constitutional challenge was declared moot, but oral arguments for the two remaining parties in the consolidated case challenging the law's constitutionality were to proceed.

On January 14, 1998, there was a three-hour hearing before Judge Hogan. Arguments were presented by attorneys for the Idaho potato farmers group and for New York City and co-plaintiffs in the cases involving cancellations by the President in August, 1997, of a limited tax benefit provision and an item of new direct spending (affecting Medicaid funding). Judge Hogan on February 12, 1998, issued his ruling, which held the Line Item Veto Act unconstitutional, because it "violates the procedural requirements ordained in Article I of the United States Constitution and impermissibly upsets the balance of powers so carefully prescribed by its Framers." On February 20, 1998 the Justice Department appealed that decision to the Supreme Court, and on February 27, 1998, the Supreme Court agreed to review the case.

The Supreme Court heard oral arguments in the case of *Clinton v. New York City* on April 27, 1998. Both sides conceded that a true item veto, allowing the President to sign some provisions and veto others when presented a piece of legislation, would be unconstitutional. The Solicitor General sought to distinguish the President's cancellation of provisions under the Line Item Veto Act from a formal repeal of the provisions, but several of the Justices seemed skeptical. Another key argument concerned the matter of delegation and whether the act conveys so much authority to the President as to violate the separation of powers. The issue of standing for the two groups of plaintiffs combined in the case also was examined. On June 25, 1998, the Court rendered its decision, holding the Line Item Veto Act unconstitutional, because its cancellation provisions were in violation of procedures set forth in the Constitution's presentment clause found in Article I, 7. (The decision is available online at [http://supct.law.cornell.edu/supct/html/97-1374.ZS.html].)

In the immediate aftermath of the Supreme Court decision there was some uncertainly regarding how funding for projects canceled under the now unconstitutional law could be restored. In the view of some, OMB might not be required to fund projects eliminated from appropriations acts, because the cancellations in the consolidated case brought before the Supreme Court only involved limited tax benefit and direct spending provisions. Some suggested that each affected party might have to sue, as did New York City in the case decided by the Supreme Court.

Although it was widely expected that funding for projects not explicitly covered by the Supreme Court decision would be restored, three weeks passed before the Justice Department and OMB determined officially that the funds were to be released. On July 17, 1998, OMB announced that funds for the remaining cancellations (those not overturned by previous litigation or the disapproval bill covering the Military Construction appropriations) would be made available.

Consideration of Alternatives to the Line Item Veto Act

After the President exercised the new authority to cancel items in appropriations acts, bills were introduced to repeal the Line Item Veto Act. On October 9, 1997, such a bill was introduced by Representative Skaggs (H.R. 2650, referred to Budget and Rules Committees) and on October 24, 1997, a similar bill was introduced by Senators Byrd and Moynihan (S. 1319, referred to Committees on Budget and Governmental Affairs).

On March 11, 1998, the House Rules Subcommittee on Legislative and Budget Process began two days of hearings on the Line Item Veto Act. Although the principal focus of the hearing was on the operation of the act during its first year, there was some consideration of possible alternatives should the law be found unconstitutional by the Supreme Court.

After the Supreme Court revisited the Line Item Veto Act on its merits and struck it down, other legislative approaches were reconsidered. Shortly after the district court decision in April 1997, such measures were reintroduced in the 105th Congress. On April 15, 1997, H.R. 1321, an expedited rescission measure similar to that passed by the House in the 103rd Congress, was introduced, and on the following day, S. 592, a separate enrollment measure identical to S. 4 as passed by the Senate in the 104th Congress, was introduced. Joint resolutions proposing an item veto constitutional amendment were also introduced. Another bill introduced in the fall of 1997, H.R. 2649, combined the features of H.R. 2650 (repealing the line-item veto) and H.R. 1321 (establishing a framework for expedited rescission).

On June 25, 1998, the same day the Supreme Court held the Line Item Veto Act unconstitutional, three more bills were introduced. Two new versions of expedited rescission (similar but not identical measures), seeking to apply expedited procedures to targeted tax benefits as well as to rescissions of funding in appropriations measures, were introduced as H.R. 4174 and S. 2220. A modified version of separate enrollment, applicable to authorizing legislation containing new direct spending, as well as to appropriations measures, was introduced as S. 2221.

Developments in the 106th, 107th, and 108th Congresses

Upon convening of the 106th Congress in January 1999, measures were again introduced to propose constitutional amendments giving the President line-item veto authority (H.J.Res. 9, H.J.Res. 20, H.J.Res. 30, and S.J.Res. 31), and to provide alternative statutory means for conveying expanded impoundment authority to the President (S. 100 and S. 139). Subsequently, two expedited rescission bills were introduced in the House (H.R. 3442 and H.R. 3523).

On July 30, 1999, the House Rules Subcommittee on the Legislative and Budget Process held a hearing to address the subject, "The Rescissions Process after the Line Item Veto: Tools for Controlling Spending." Testimony was received from the Office of Management and Budget, the Congressional Budget Office, and the General Accounting Office, as well as from a panel of academic experts.

On March 23, 2000, the House Judiciary Subcommittee on the Constitution held a hearing to consider measures proposing a constitutional amendment for an item veto. Two Members testified in support of H.J.Res 9. A second panel, consisting of seven outside witnesses, provided various viewpoints.

During the presidential election campaign in 2000, the topic of expanded rescission authority for the President received some attention, with both candidates on record in support of such legislation. In his budget message transmitted to Congress on February 28, 2001, titled *A Blueprint for New Beginnings*, President George W. Bush endorsed several budget process reforms, including a call to "restore the President's line item veto authority." In the subsequent discussion, the document suggested that the constitutional flaw in the Line Item Veto Act of 1996 might be corrected by linking the line-item veto to retiring the national debt. On April 9, 2001, President Bush transmitted to Congress a more detailed budget for FY2002, without further mention of the line-item veto proposal.

On October 9, 2002, the Congressional Budget Office estimated a total federal budget deficit of about $157 billion for FY2002, reflecting the largest percentage drop in revenues in over 50 years and the largest percentage growth in spending on programs and activities in 20 years. On October 29, 2001, the Department of the Treasury released the final monthly statement of receipts and outlays for FY2001, confirming a deficit in the on-line federal budget (on-budget accounts exclude the spending and revenues of Social Security and the Postal Service) of $159 billion. Some hoped that the worsening deficit picture might stimulate renewed interest in mechanisms thought conducive to spending control, such as a line-item veto or expanded impoundment authority for the President.

In his budget submission for FY2003, sent to Congress on February 4, 2002, President Bush again endorsed various proposals for reform of the budget process, including another try at crafting a line-item veto that could pass constitutional muster. According to the *Analytical Perspectives* volume (p. 285), the proposal would restore authority exercised by Presidents prior to 1974 (and the restrictions imposed by the ICA). Specifically, the proposal "would give the President the authority to decline to spend new appropriations, to decline to approve new mandatory spending, or to decline to grant new limited tax benefits (to 100 or fewer beneficiaries) whenever the President determines the spending or tax benefits are not essential Government functions, and will not harm the national interest."

In the 107th Congress, two measures proposing an item veto constitutional amendment were introduced. H.J.Res. 23 sought to allow the President to disapprove any item of appropriation in any bill. H.J.Res. 24 sought to allow the President to decline to approve (i.e., to item veto) any in whole dollar amount of discretionary budget authority, any item of new direct spending, or any limited tax benefit. On March 28, 2001, during House consideration of H.Con.Res. 83 (FY2002 budget resolution), the Blue Dog Coalition substitute was offered, which contained a sense of the Congress provision calling for modified line-item veto authority to require Congressional votes on rescissions submitted by the President; the amendment was rejected 204-221.

In the budget submission for FY2004, President Bush repeated his request for legislation to provide him with a "constitutional line-item veto" to use on "special interest spending items." While discussion the previous year had called for applying savings to debt reduction, the explanation now suggested that all savings from the line-item veto would be designated for deficit reduction.

Early in the 108th Congress, H.R. 180, an omnibus budget reform measure, was introduced, containing provisions for expedited procedures for congressional action on proposals from the President to rescind budget authority identified as "wasteful spending" (Section 252). In the *Congressional Record*, April 11, 2003, Senator Robert Byrd recounted the demise of the Line Item Veto Act of 1996 (pp. S5397-S5399). On June 16, 2003, H.J.Res. 60, proposing a constitutional amendment to authorize the line-item veto, was introduced by Representative Andrews. On November 19, 2003, S.J.Res. 25, proposing a constitutional amendment and reading, in part, "Congress shall have the power to enact a line-item veto," was introduced by Senator Dole.

In his budget submission for FY2005, transmitted February 2, 2004, President Bush again called for legislation to provide him with a "constitutional line-item veto" linked to deficit reduction. According to the *Analytical Perspectives* volume (pp. 217-218), such a device is needed to deal with spending or tax provisions benefitting "a relative few which would not likely become law if not attached to other bills." The line-item veto envisioned would give the President authority "to reject new appropriations, new mandatory spending, or limited grants of tax benefits (to 100 or fewer beneficiaries) whenever the President determines the spending or tax benefits are not essential Government priorities." All savings resulting from the exercise of such vetoes would go to reducing the deficit.

In the second session additional budget reform measures with familiar provisions that would have granted expedited rescission authority to the President were introduced. H.R. 3800, the Family Budget Protection Act of 2004, contained expedited rescission provisions in Section 311; and H.R. 3925, the Deficit Control Act of 2004, included such provisions in Section 301. The budget resolution for FY2005 (S.Con.Res. 95), as approved by the Senate on March 11, 2004, contained several Sense of the Senate provisions in Title V. Section 501, relating to budget process reform, called for enactment of legislation to restrain government spending, including such possible mechanisms as enhanced rescission or constitutional line-item veto authority for the President. On June 24, 2004, provisions from H.R. 3800 were offered as a series of floor amendments during House consideration of H.R. 4663, the Spending Control Act of 2004. An amendment that sought to initiate expedited rescission for the President to propose the elimination of wasteful spending identified in appropriations bills was rejected by a recorded vote of 174-237. On August 3, 2004, the Kerry-Edwards plan "to keep spending in check while investing in priorities and cutting wasteful spending" was released. Included was a proposal for expedited rescission authority, whereby the President could sign a bill and then send back to Congress a list of specific spending items and tax expenditures of which he disapproved, for an expedited, up-or-down vote.

President Bush reiterated his support for restoring presidential line-item veto authority in his speech to the Republican national convention on September 2, 2004. At his first post-election news conference, on November 4, 2004, in response to a question about reducing the deficit, he stated, in part, that the president needed a line item that "passed constitutional muster," in order "to maintain budget discipline." At a press conference on December 20, 2004, the President again called for line-item veto authority, responding that he had not yet vetoed any appropriations bills, because Congress had followed up on his requested budget targets; but further observing, "Now I think the president ought to have the line item veto because within the appropriations bills there may be differences of opinion [between the executive branch and Congress] on how the money is spent."

Developments in the 109th Congress

In his budget submission for FY2006, transmitted February 7, 2005, President Bush called for a "line item veto linked to deficit reduction," but no draft proposal followed. On January 31, 2006, in his State of the Union address, President Bush reiterated his request for line-item veto authority, noting: "And we can tackle this problem [of too many special-interest "earmark" projects] together, if you pass the line-item veto."

On March 6, 2006, President Bush sent a draft bill titled the Legislative Line Item Veto Act of 2006 to Congress, and the measure was introduced the next day (see H.R. 4890 and S. 2381 below). Title notwithstanding, the bills would amend the Impoundment Control Act of 1974 (ICA) to incorporate a typical expedited rescission framework, intended through procedural provisions to require an up-or-down vote on presidential requests to cancel certain previously enacted spending or tax provisions. Since congressional approval remains necessary for the rescissions to become permanent, expedited rescission is generally viewed as a weaker tool than an item veto. H.R. 4890 and S. 2381, as introduced, also contained rather novel provisions authorizing the President to withhold funds proposed for rescission or to suspend execution of items of direct spending for up to 180 days. These latter provisions arguably sanction the return of policy deferrals, originally provided for in the ICA, subject to a one-house veto, but invalidated by the *Chadha* and *New Haven* decisions, as well as the statutory provisions in P.L. 100-119.

On March 15, 2006, the House Rules Subcommittee on the Legislative and Budget Process held a hearing on H.R. 4890. Testimony was received from Representative Paul Ryan, sponsor of H.R. 4890, and from Representative Jerry Lewis, chairman of the House Appropriations Committee. The Deputy Director of OMB and the Acting Director of CBO also appeared before the subcommittee. On April 27, 2006, the House Judiciary Subcommittee on the Constitution held a hearing on the line item veto and received testimony from Representatives Paul Ryan and Mark Kennedy; and from two attorneys, Charles J. Cooper in private practice, and Cristina Martin Firvida of the National Women's Law Center. On May 2, the Senate Budget Committee held a hearing on S. 2381; witnesses included Senator Robert Byrd, Austin Smythe from OMB, Donald Marron from CBO, Louis Fisher from the Library of Congress, and attorney Charles J. Cooper.

The House Budget Committee held two hearings on H.R. 4890, on May 25 and June 8, 2006. The first day focused on "Line-Item Veto: Perspectives on Applications and Effects" and featured four witnesses representing private sector groups, including a former Member and two former congressional aides. The second hearing concentrated on constitutional issues, with testimony received from Charles Cooper, Louis Fisher, and Professor Viet D. Dinh from the Georgetown University Law Center.

On June 14, the House Budget Committee held markup of H.R. 4890. Representative Paul Ryan offered a substitute amendment, which was further amended. An amendment offered by Representative Cuellar to add a sunset provision, whereby the act would expire after six years, was approved by voice vote. Also successful was an amendment offered by Representative Neal, as further amended by Representative McCotter, expressing the sense of Congress regarding possible abuse of proposed cancellation authority: no President or other executive official should make any decision for inclusion or exclusion of items in a special message contingent upon a Members' vote in Congress. The Ryan substitute, as amended, was adopted by voice vote. The Committee then voted 24-10 to report the bill favorably (see H.Rept. 109-505 Part 1, June 16, 2006).

Several amendments offered by minority Members were rejected, generally with a straight party-line vote. Democrats sought to exempt future changes in Social Security, Medicare, and veterans' entitlement programs from possible cancellations under the LLIVA. Democrats also attempted unsuccessfully to restore pay-as-you-go budget rules, to strengthen requirements for earmark disclosures, and enforcement of the three-day lay-over rule for appropriations bills before floor votes.

On June 15, the House Rules Committee met to markup H.R. 4980 and voted 8-4 to approve a substitute amendment containing the same version as approved by the Budget Committee (H.Rept. 109-505 Part 2). Several changes in the substitute version addressed concerns with the bill as introduced. For example, in response to concern expressed over a return to policy deferrals by allowing the President to withhold spending for up to 180 calendar days, the substitute would allow the President to withhold funds for a maximum of 90 calendars days (an initial 45 day period, which could be extended for another 45 days). Submission of special rescission or cancellation messages by the President may occur only within 45 days of enactment of the measure, and the President would be limited to submission of five special messages for each regular act and 10 messages for an omnibus measure. Submission of duplicative proposals in separate messages would be prohibited.

On the other hand, some changes in the substitute version approved by the Budget and Rules Committees, and subsequently by the full House, may generate new controversy. The substitute narrows the definition of a targeted tax benefit to a revenue-losing measure affecting a single beneficiary, with the chairs of the Ways and Means and Finance Committees to identify such provisions. The definition in H.R. 4890 as introduced referred to revenue-losing measures affecting 100 or fewer beneficiaries, as did the Line Item Veto Act of 1996. The bill as introduced, however, would have allowed the President to identify the provisions by default, whereas the 1996 law assigned the duty to the Joint Committee on Taxation. Supporters of the substitute version suggest that it would treat targeted tax benefits comparably to earmarks in appropriations bills. Critics contend that the new definition is too narrow, and that few tax benefits would be subject to cancellation.

On June 21, the House Rules Committee voted to report H.Res. 886, providing for the consideration of H.R. 4890, as amended, favorably by a nonrecord vote (H.Rept. 109-518). A manager's amendment offered by Representative Paul Ryan was adopted as a part of the rule for debate. In response to concerns raised by the Transportation and Infrastructure Committee, the amendment added clarifying language that any amounts cancelled which came from a trust fund or special fund would be returned to the funds from which they were originally derived, rather than revert to the General Fund. The following day the House took up H.R. 4890, approved the rule (H.Res. 886) by vote of 228-196, and passed the measure by vote of 247-172. A motion by Representative Spratt to recommit H.R. 4890 to the Budget Committee with instructions to report it back to the House with an amendment was rejected by vote of 170-249.

Meanwhile, on June 20, 2006, the Senate Budget Committee marked up S. 3521. Minority amendments to exclude Medicare, Social Security, and Veterans' Health Programs from possible rescissions were rejected 10-12 on party-line votes. A manager's amendment was adopted by voice vote, which among other things would prohibit the resubmission of items of direct spending or targeted tax benefits previously rejected by Congress, but would allow the President to resubmit proposed cancellations if Congress would fail to complete action on them due to adjournment. The committee then voted 12-10 to report S. 3521, as amended, favorably. On June 27, 2006, the President met with some Senators at the White House to discuss the Legislative Line Item Veto bill, and subsequently urged that the Senate act quickly to approve such a measure. The report to accompany S. 3521 was filed on July 14, 2006 (S.Rept. 109-283).

LEGISLATION

H.R. 982 (Mark Udall). Expedited Rescissions Act of 2005. Amends the ICA to provide for expedited consideration of certain rescissions of budget authority proposed by the President. Introduced on February 17, 2005; jointly referred to Committees on Budget and on Rules.

H.R. 2290 (Hensarling). Family Budget Protection Act. Omnibus budget reform bill. Section 311 establishes expedited procedures for congressional consideration of certain rescission proposals from the President. Similar expedited rescission provisions were considered by the House in 2004 and rejected by vote of 174-237. Introduced on May 11, 2005; referred to the Committee on the Budget and in addition to the Committees on Rules, Ways and Means, Appropriations, and Government Reform for consideration of those provisions falling within their respective jurisdictions.

H.R. 4699 (Mark Udall). Stimulating Leadership in Cutting Expenditures (SLICE) Act of 2006. Amends the ICA to provide for expedited consideration of certain presidential proposals for rescission of budget authority contained in appropriation acts or in P.L. 109-59 (omnibus transportation authorization law). Introduced on February 1, 2006; referred jointed to Committees on Budget and on Rules.

H.R. 4889 (Gingrey). Separate Enrollment and Line Item Veto Act of 2006. Requires separate enrollment of each item of appropriation or authorization in measures passed by both Houses in identical form and provides for congressional consideration of such bills. (Similar to S. 4 as passed by the Senate on March 23, 1995.) Introduced on March 7, 2006; referred to the Budget Committee.

H.R. 4890 (Paul Ryan)/S. 2381(Frist). Legislative Line Item Veto Act of 2006. Amends the ICA of 1974 to provide for expedited consideration of certain rescissions of budget authority or cancellation of targeted tax benefits proposed by the President in special messages. Requires any rescinded discretionary budget authority or items of direct spending to be dedicated to deficit reduction. Grants the President authority to withhold funds proposed for rescission or to suspend execution of direct spending and targeted tax benefits. Both bills introduced on March 7, 2006. H.R. 4890 jointly referred to Committees on Budget and on Rules; S. 2381 referred to Budget Committee. Reported favorably, as amended, by

House Budget Committee on June 16 (H.Rept. 109-505 Part 1), and by Rules Committee on June 19, 2006 (H.Rept. 109-505 Part 2). Passed House, as amended, by vote of 247-172 on June 22, 2006.

H.R. 5667 (Spratt). Deficit Reduction and Effective Legislative Line Item Veto Act of 2006. Amends the ICA of 1974 to provide for expedited consideration of certain cancellations of discretionary budget authority and targeted tax benefits. Provides for other budget process reforms. Introduced on June 21, 2006; referred to Committees on Budget, on Rules, and Standards of Official Conduct.

H.J.Res. 63 (Mark Kennedy). Constitutional amendment. Allows the President to disapprove an item of appropriation in any bill. Introduced on July 29, 2005; referred to Judiciary Committee.

H.J.Res. 67 (Platts). Constitutional amendment. Allows the President to decline to approve in whole any dollar amount of discretionary budget authority, any item of new direct spending, or any tax benefit. Introduced on September 21, 2005; referred to the Judiciary Committee.

S. 2372 (Kerry). Expedited Budget Item Veto Review Act of 2006. Amends the ICA to provide for expedited consideration of certain proposed cancellations of appropriations, new direct spending, and limited tax provisions. Introduced on March 6, 2006; referred to the Budget Committee.

S. 3521 (Gregg). Stop Over Spending Act of 2006. An omnibus budget reform bill. Title I, the Legislative Line Item Veto Act, amends the ICA of 1974 to provide for expedited consideration of certain rescissions of budget authority or cancellation of targeted tax benefits proposed by the President. Introduced on June 15, 2006; referred to the Budget Committee. Committee voted 21-10 to report bill, as amended, favorably on June 20, 2006. Report filed July 14, 2006 (S.Rept. 109-283).

S.J.Res. 26 (Dole). Constitutional amendment. Grants Congress the power to enact a line-item veto. Introduced on September 27, 2005; referred to the Judiciary Committee.

For Additional Reading

CRS Report RL33517, *Legislative Line Item Veto Act of 1996:Background and Comparison of Versions*, by Virginia A. McMurtry.

CRS Report RL33365, *Line Item Veto: A Constitutional Analysis of Recent Proposals*, by Morton Rosenberg.

CRS Report RL30223 *Presidential Rescission Authority: Efforts to Modify the 1974 Framework*, by Virginia A. McMurtry.

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