

item veto without any additional constitutional or statutory authority. The constitutional basis for the President's exercise of a line-item veto is to be found in article I, section 7, clause 3 of the Constitution.

The first article of the Constitution vests legislative authority in the two Houses of Congress established thereunder. Clause 2 of section 7 of the first article provides the presidential authority and procedure to veto "bills." This is the basis for the President's clearly established authority to veto legislation. The provision also established the procedure under which Congress may override the President's veto.

The question of conferring authority on the President to veto specific items within a bill was not discussed at the Constitutional Convention. During the drafting of the Constitution in 1787, however, James Madison noted in his subsequently published diary that he had expressed his concern that Congress might try to get around the President's veto power by labeling "bills" by some other term. In response to Madison's concern and in order to guard the President's veto authority from encroachment or being undermined and preserve the careful balance of power it sought to establish, Edmund Randolph of Virginia proposed and the Convention adopted language from the Massachusetts Constitution which became article I, section 7, clause 3.

This clause requires that in addition to bills:

"Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill [these being set forth in article I, section 7, clause 2]."

In combination with the preceding clause 2 of section 7, this third clause gives the President the authority to veto any legislative adoption of Congress, subject to congressional override.

The historical context of its adoption supports the position that clause 3 vests the President with authority to veto individual items of appropriation.

According to the noted historian Professor Forrest McDonald in his paper "The Framers' Conception of the Veto Power," published in "Pork Barrels and Principles: The Politics of the Presidential Veto" 1-7 (1988), clause 3 was taken directly from a provision of the Massachusetts Constitution of 1780. This provision set in the State's fundamental charter Massachusetts law dating to 1733 first implemented to give the Royal Governor a check on unbridled spending by the colonial legislature, which had put the colony in serious debt by avoiding the governor's veto power by appropriating money through "votes" rather than legislation. Professor McDonald has also noted in an op-ed article published in the Wall Street Journal, that the agents of the King of England could disapprove or alter colonial legislative enactments "in any part thereof."

Discussion and debate at the Constitutional Convention over the meaning of clause 3 was scant. In his notes of the proceedings of the Convention, our main source for the intent of the Framers of our fundamental Charter, Madison noted only that Roger Sherman of Connecticut "thought [article I, section 7, clause 3] unnecessary, except as to votes taking money out of the

Treasury." No other member of the Convention appears to have discussed the clause. Sherman's comment was important, as it demonstrates the context in which the Framers saw the newly added provision: it was needed only insofar as it pertained to votes appropriating money from the Treasury. Perhaps discussion was so scant because the meaning of the clause was clear to the Framers.

In his 1988 article, Professor McDonald notes that two Anti-Federalist pamphleteers opposed the proposed Constitution in part because article I, section 7, clause 3 "made too strong a line-item veto in the hands of the President." The Federalist Governor of Massachusetts, James Bowdoin, argued during the Massachusetts ratifying convention that the veto power was to be read in light of the Massachusetts experience in which, as noted, the line-item veto was exercised by the governor. In "The Federalist" No. 69, Alexander Hamilton wrote that the constitutional veto power "tallies exactly with the revisionary authority of the council of revision" in New York, which, according to Professor McDonald, had the power to revise appropriations bills, not merely turn down the entire legislative enactment. Massachusetts, Georgia, and Vermont also gave their executives revisionary authority over legislative appropriations.

Roger Sherman's comment was prescient, as he focused on the issue confronting us over 200 hundred years later. The language of clause 3 has proven to be redundant, as Congress has not attempted to avoid the strictures of the second clause. But clause 3 is not superfluous as regards, in Sherman's language, "votes taking money out of the Treasury." In order to give effect to this provision, the President must have the authority to separate out different items from a single appropriation bill and veto one or more of those individual items.

This reading is consistent with the early national practice, under which Presidents viewed appropriations as permissive rather than mandatory. President Washington and his Treasury Secretary, Alexander Hamilton, assumed that the President had the authority to shift appropriated funds from one account to another. The former Anti-Federalists, having become the Republican party, objected to these transfers. Once a Republican, Thomas Jefferson, became President, however, he too considered appropriations bills to be permissive and refused on at least two occasions to spend money that had been appropriated by Congress.

Professor McDonald points out in his 1988 article that shortly after the new Federal Constitution was ratified, several of the States rewrote their constitutions to conform their basic charters to the new Federal one. The contemporaneous experience of these States is highly relevant to the Framers' understanding of the text they had devised. Several States adopted new constitutions in 1789 or the early 1790's. Of these, Georgia and Pennsylvania, and the new States of Vermont and Kentucky all adopted constitutions that included the phrasing of article I, section 7 to enable their governors to exercise the line-item veto.

According to a 1984 report of the Committee on the Budget of the House of Representatives, "The Line-Item Veto: An Appraisal," the practice at the national level of the President's exercise of a line-item veto continued. President Andrew Jackson declined, over congressional objection, to enforce provisions of a congressional enactment in 1830. In 1842, President John Tyler signed a bill that he refused to execute in full. Instead, he

advised Congress that he had deposited with the Secretary of State "an exposition of my reasons for giving [the bill] my sanction." Congress issued a report challenging the legality of the President's action.

Professor McDonald noted that between 1844 and 1859, three northern States, responding to fiscal problems, adopted constitutions explicitly providing their governors with power to veto individual items of appropriation. Building on this history, the provisional Constitution of the Confederate States of America also made explicit that the President of the Confederacy had line-item veto authority.

It was only after the Civil War that President Grant suggested that he did not already enjoy the authority to veto individual items of appropriation and other specific riders to legislation and urged that he be granted such authority. President Grant's position that he did not enjoy a line-item veto under the Constitution was directly contradictory to the original understanding of the Constitution, a position endorsed by Presidents Washington, Jefferson, Jackson, and Tyler through usage. It ignored the original understanding of the Framers of the Constitution and the historical context in which that document was drafted. Proposals for a Federal line-item veto have been made intermittently since the Grant Administration.

An alternative argument based on the language of article I, section 7, clause 2, but consistent with the original understanding of the veto power, has also been made to support the President's exercise of a line-item veto. In discussing why the issue of a line-item veto was not raised during the Constitutional Convention, Professor Russell Ross of the University of Iowa and former United States Representative Fred Schwengel wrote in an article "An Item Veto for the President?" 12 *Presidential Studies Quarterly* 66 (1982), "[i]t is at least possible that this subject was not raised because those attending the Convention gave the term 'bill' a much narrower construction than has since been applied to the term. It may have been envisioned that a bill would be concerned with only one specific subject and that subject would be clearly stated in the title."

Professor Ross and Mr. Schwengel quote at length the former Chairman of the House Judiciary Committee, Hatton W. Summers, who defended this view in a 1937 letter to the Speaker of the House that was reprinted in the Congressional Record on February 27, 1942. Chairman Summers was of the view that the term "bill" as used in clause 2 of section 7 of the first article was intended to be applied narrowly to refer to "items which might have been the subject matter of separate bills." This reading he thought most consistent with the purpose and plan of the Constitution. Thus, Chairman Summers believed that clause 2, as originally intended, could also be relied upon to vest line-item veto authority in the President.

Chairman Summers' reading is also consistent with the practice in some of the colonies. Professor McDonald cites to the Maryland constitution of 1776, which expressly provided that any enacted bill could have only one subject. Several other States followed Maryland during the succeeding decades and limited legislative enactments to a single subject.

A review of the contemporary understanding of the veto provisions of the Constitution when drafted supports the view that the President currently enjoys line-item veto authority, which several Presidents have exercised.

U.S. SENATE,
COMMITTEE ON APPROPRIATIONS,
Washington, DC, November 9, 1993.

The PRESIDENT,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: Following up on our conversation on Air Force One enroute to Pittsburgh last week, I am enclosing for you a copy of a statement which I presented on the Senate floor today together with a memorandum of law on your power to exercise the line-item veto without a constitutional amendment or statutory authority.

The essence of the position is that Article I, Section 7, Clause 3 of the U.S. Constitution adopted language from the Massachusetts Constitution which authorized the line-item veto. Pennsylvania, Georgia, Vermont and Kentucky included that phrasing to enable their governors to exercise the line-item veto. Presidents Jefferson, Jackson and Tyler refused to execute portions of congressional appropriations enactments constituting a line-item veto.

Again my thanks for including me in last week's trip to Pennsylvania.

My best.

Sincerely,

ARLEN SPECTER.

THE WHITE HOUSE,
Washington, DC, December 18, 1993.

Hon. ARLEN SPECTER,
U.S. Senate,
Washington, DC.

DEAR SENATOR SPECTER: Thank you for your letter discussing the President's power to exercise line-item veto authority. Your remarks on the Senate floor, as well as the memorandum of law enclosed, are thoughtful statements on the issue, deserving of considered attention. I appreciate your sharing them with me.

As you know I have supported granting the President line-item veto authority legislatively. I believe that H.R. 1578 as passed by the House, which provides for a modified line-item veto, represents a good compromise that would go a long way toward achieving the purposes of a line-item veto. I hope that I will continue to have your support in the effort to control spending and eliminate undesirable items of spending.

With best wishes,

Sincerely,

BILL CLINTON.

SENATE RESOLUTION 61—RELATIVE TO THE PRESIDENTIAL VETO

Mr. SPECTER submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 61

Whereas article I, section 7, clause 2 of the Constitution authorizes the President to veto bills passed by both Houses of Congress;

Whereas article I, section 7, clause 3 of the Constitution authorizes the President to veto every "Order, Resolution, or Vote" passed by both Houses of Congress;

Whereas during the Constitutional Convention, Roger Sherman of Connecticut opined that article I, section 7, clause 3 was "unnecessary, except as to votes taking money out of the Treasury";

Whereas the language of article I, section 7, clause 3 was taken directly from the Constitution of the Commonwealth of Massachusetts of 1780;

Whereas the provision of the Massachusetts Constitution of 1780 that was included as article I, section 7, clause 3 of the United States Constitution vested in the Governor

of Massachusetts the authority to veto individual items of appropriation contained in omnibus appropriations bills passed by the Massachusetts Legislature;

Whereas the Governor of Massachusetts had enjoyed the authority to veto individual items of appropriation passed by the legislature since 1733;

Whereas in explaining the purpose of the constitutional veto power, Alexander Hamilton wrote in *The Federalist* No. 69 that it "tallies exactly with the revisionary authority of the council of revision" in the State of New York, which had the authority to revise or strike out individual items of appropriation contained in spending bills;

Whereas shortly after the new Federal Constitution was adopted, the States of Georgia, Pennsylvania, Vermont, and Kentucky adopted new Constitutions which included the language of article I, section 7 of the Federal Constitution, and allowed their Governors to veto individual items of appropriation on the basis of these provisions;

Whereas the contemporary practice in the States is probative as to the understanding of the framers of the Constitution as to the meaning of article I, section 7, clause 3;

Whereas President Washington, on a matter of presidential authority, exercised the prerogative to shift appropriated funds from one account to another, effectuating a line-item veto;

Whereas President Jefferson considered appropriations bills to be permissive and refused on at least two occasions to spend funds appropriated by the Congress: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) the Constitution grants to the President the authority to veto individual items of appropriation and

(2) the President should exercise that constitutional authority to veto individual items of appropriation without awaiting the enactment of additional authorization.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. LOTT. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet on Tuesday, January 17, 1995, at 10 a.m. in open and closed sessions to discuss the worldwide threat to the United States.

The PRESIDING OFFICER. Without objection, it is so ordered.

MAKING MAJORITY PARTY APPOINTMENTS TO COMMITTEES ON SMALL BUSINESS AND AGING

Mr. LOTT. Mr. President, I send a resolution to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will state the resolution by title. The bill clerk read as follows:

A resolution (S. Res. 57) making majority party appointments to the Small Business and Aging Committees for the 104th Congress.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

The PRESIDING OFFICER. Without objection, the resolution is considered and agreed to.

So the resolution (S. Res. 57) was agreed to, as follows:

Resolved, That the following shall constitute the majority party's membership on the following Senate committees for the 104th Congress, or until their successors are appointed:

Small Business: Mr. Bond (Chairman), Mr. Pressler, Mr. Burns, Mr. Coverdell, Mr. Kempthorne, Mr. Bennett, Mrs. Hutchison, Mr. Warner, Mr. Frist, and Ms. Snowe.

Aging: Mr. Cohen (Chairman), Mr. Pressler, Mr. Grassley, Mr. Simpson, Mr. Jeffords, Mr. Craig, Mr. Burns, Mr. Shelby, Mr. Santorum, and Mr. Thompson.

PROVIDING FOR MEMBERS OF JOINT COMMITTEES ON PRINTING AND THE LIBRARY

AUTHORIZING PRINTING OF SENATE RULES

Mr. LOTT. Mr. President, I send to the desk two resolutions regarding Rules Committee routine matters and ask unanimous consent for their immediate consideration, en bloc, that they be agreed to, en bloc, and the motion to reconsider be laid on the table, en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the resolutions (S. Res. 58 and S. Res. 59) were agreed to, as follows:

S. RES. 58

Resolved, That the following-named Members be, and they are hereby, elected members of the following joint committees of Congress:

Joint Committee on Printing: Ted Stevens, Mark O. Hatfield, Thad Cochran, Wendell H. Ford, and Daniel K. Inouye.

Joint Committee on the Library of Congress: Mark O. Hatfield, Ted Stevens, Thad Cochran, Claiborne Pell, and Daniel P. Moynihan.

S. RES. 59

Resolved, That a collection of the rules of the committees of the Senate, together with related materials, be printed as a Senate document, and that there be printed 600 additional copies of such document for the use of the Committee on Rules and Administration.

ORDERS FOR TOMORROW

Mr. LOTT. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 11:30 a.m. on Wednesday, January 18, 1995; that following the prayer, the Journal of the proceedings be deemed approved to date, and the time for the two leaders be reserved for their use later in the day; that there then be a period for the transaction of routine morning business not to go beyond the hour of 12 noon, with Senators permitted to speak for not more than 5 minutes each with the following Senators permitted to speak for the designated times: Senator INHOFE, 10 minutes; Senator THOMAS, 10 minutes, and Senator CAMPBELL for 5 minutes.