COMPETITION IN RURAL MARKETS

The second cardinal rule is that blind allegiance to competition will hurt rural telecommunications delivery. The fact is that competition—without conditions—does not serve rural markets. Airline deregulation is but one example. In a deregulated environment, airlines have chosen not to serve many rural areas. Why? Because the economics of competitive industry do not drive service into rural areas.

The fundamental premise in the telecommunications reform legislation we considered last year—and that is emerging this year—is that competition will lead to lower rates and encourage investment. In most cases, this is the correct approach. Competition should be introduced into all aspects of telecommunications. When the old Ma Bell was divested of its local monopolies, separating long distance and manufacturing services into competitive markets, competition lead to lower long-distance prices and a flood of new equipment into the marketplace. Nobody can question that consumers have benefited from the emergence of hundreds of long distance companies and the thousands of new products that were borne from a competitive equipment manufacturing industry. Consumers have benefited from allowing competition in long distance and manufacturing industries and I am confident that consumers will also benefit under competitive local exchange service. Introducing competition into local telephone service can produce the same positive result—but only if it is done right and a one-size-fits-all approach is not taken.

If unstructured competition is permitted in rural markets and competitors are allowed to cherry pick only the high revenue customers, serious destruction of the incumbent carrier, who is obligated to serve all customers, including the high cost residents, will occur. A local telephone exchange is like a tent and if a competitor is permitted to take out the center pole, the whole tent collapses. Larger markets may be able to sustain some cherry picking, but in smaller rural markets, the results could be higher residential rates.

The fact is that competition can be destructive in markets that cannot sustain multiple competitors. A blind allegiance to competition could result in higher costs and diminished services for rural Americans. The question is not whether or not competition should occur in rural areas. Rather the question is how can the rules of competition be structured to ensure that rural consumers continued to relieve quality, affordable service. Without caution, we could be setting the stage for competition to jeopardize the national public switched network— and universal service—that almost all Americans enjoy today.

Unstructured competition could lead to geographic winners and losers. We must not agree to any policy that creates a system of information-age haves and have-nots. I cannot and will not support public policy that leaves rural Americans reeling in its wake. An unrestricted competitive and deregulatory telecommunications policy will not work in rural America. Such policy in fact threatens higher, not lower, consumer prices. Such policy in fact threatens less, not more, consumer choice. And such policy in fact will cost taxpayers more, not less, when it forces existing LEC's out of business.

Telecommunications reform should not adopt a one-size-fits-all policy of competition and deregulation for the entire Nation. Competition and deregulation cannot work as a national policy without rural safeguards.

I am not interested in giving telephone companies a competitive advantage over other telecommunications carriers. But I am interested in ensuring an affordable, high-quality telecommunications network in rural America. The cable industry and electric utilities want to compete in the local exchange market and phone companies want to compete in cable. I support breaking down the barriers that prohibit these industries from competing in each other's businesses. However, we must adopt safeguards that are in the interest of rural consumers who must be our first concern. Only with safeguards are all rural Americans guaranteed to receive the high-quality, affordable telecommunications service they deserve. That's the bottom line. New telecommunications policy must be about rural consumers.

In exchange for universal service support mechanisms, telephone companies serving rural and high-cost areas have undertaken the obligation to serve areas that market forces would leave behind. The only reason why thousands of Americans living in rural areas have phone service is because our existing policies require certain carriers to provide that service. In addition, necessary support mechanisms to ensure that service are available so that service can be provided at an affordable rate. It seems to me that if competition is going to enter into rural and high-cost areas, competitors ought to be required to undertake the same responsibilities. Let's not close the door to competition—but let's require competitors and incumbents alike to carry the same burdens. This is the only way we can have fair competition in rural areas.

The fact is that U.S. telecommunications policy has always recognized local exchange service as essential to the well-being of all Americans. The same cannot be said of cable TV or other related services. The key point here is that we must not adopt any policy that would jeopardize the provision of essential local exchange service. And we must certainly not adopt any policy that would alter current policy so dramatically that the interests of rural consumers would suffer.

CONCLUSION

In summary, preserving universal service is sound public policy. Universal service benefits the entire Nation, not just rural areas. As we pursue new telecommunications policy, we must also ensure that real, effective mechanisms remain in place to preserve and advance universal service. It is equally important to provide rural safeguards to ensure that competition results in positive benefits for rural consumers. The conventional wisdom of free-market economics generally does not apply to the different conditions in rural America where low population density and vast service areas translate to less demand and higher costs.

Telecommunications reform legislation is one of the most comprehensive and significant pieces of legislation that many of us will work on in our congressional careers. Not only does billions of dollars hang in the balance between some of the largest corporations in the world, but more importantly, the affordability and effectiveness of a central element of economic and social life of Americans is at stake—an advanced telecommunications network. I urge my colleagues to address this legislation with an understanding and appreciation for the complexities involved and not to resort to easy ideological solutions. There is too much at stake. Not only do all Senators have a common national goal to promote the development of an advanced telecommunications network, but we share the same responsibility to ensure that all Americans have access to that network—regardless of their geographic residence.

LEGISLATIVE LINE-ITEM VETO ACT

The Senate continued with the consideration of the bill.

Mr. MCCAIN. Mr. President, I now move to S. 4, debate on the line-item veto.

The PRESIDING OFFICER. The bill is pending.

CLOTURE MOTION

Mr. MCCAIN. Mr. President, I send a cloture motion to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on S. 4, the line-item veto bill:

Bob Dole, Trent Lott, Dan Coats, Slade Gorton, Robert Bennett, John McCain, Ted Stevens, James Inhofe, Mike DeWine, John Ashcroft, Craig Thomas, Bob Smith, Alfonse D'Amato, Mitch McConnell, Larry Pressler, Don Nickles, Pete Domenici.

Mr. MCCAIN. Mr. President, as my colleagues are aware, that is the second cloture motion that has been filed at the desk.

Mr. President, after discussion with the majority leader, I think it would be well to inform my colleagues that we anticipate a cloture vote on Wednesday, tomorrow, at some point, at the discretion of the majority leader, and then again on Thursday and, if necessary, another one on Friday.

I remind my colleagues that the bill is under consideration. It is open for amendments. We welcome amendments at this time. I remind Members that first-degree amendments must be filed by 1 p.m. today in the event of a cloture motion.

Mr. President, in discussions with the majority leader, he has informed me that, if necessary, we would stay, in order to complete consideration of this bill in a timely fashion, that we would plan on staying in late both tonight, tomorrow night, and Thursday night, if necessary. Hopefully, that is not necessary. Hopefully, we can pass a cloture motion and close off debate in 30 hours, of course, with relevant amendments that are germane to be considered at that time.

I also point out that, in the event there are amendments that are not ruled specifically germane to the bill, the Members should file those by 1 p.m. today.

Mr. President, it is clear the intentions on this side of the aisle, and with the majority leader's help, that we do not intend to drag this debate out for weeks. We intend to dispose of the issue. It has been brought up on numerous occasions, dating back to 1985. As short a time ago as last year, a sense-of-the-Senate resolution basically encompassing most of the provisions of the DOLE substitute was voted on, and the issue is clear and will not require extended debate in the view of the majority leader and those on this side of the aisle.

Let me just point out, in the 99th Congress, a hearing was held in committee and the motion to proceed was filibustered. There are 53 current Members of the Senate who were here then. It has been reintroduced every Congress since then. Additionally, in 1990, on July 25, the Senate, the Budget Committee, favorably reported this bill, and finally during the 103d Congress, the Senate voted on a sense of the Senate regarding this issue.

I also remind my colleagues that the bill is very short. It is five pages and one sentence long. It does not require a great deal of time and effort to digest it. It is, I think, rather simple, rather brief, especially compared with bills that we dispose of that are of much greater length on a routine basis around here.

Obviously, Mr. President, there will be questions about this bill. There will be amendments, hopefully, that will help define this legislation. We do not view it as perfect. But the fundamentals associated with it are, in my view, important and unchangeable.

Those are based around the following assumptions:

First, that it would require a two-thirds majority in both Houses in order to override the President's veto. In my view, that is the fundamental principle behind the line-item veto and one that is not negotiable.

Second, the separate enrollment aspect which allows the President to eliminate pork using his constitutional authority by a simple veto as each piece of legislation is divided up into separate bills. Now, there will be a lot of discussion about that, Mr. President. There was the last time, in 1985, when it was brought up.

I point out that I went to see the enrolling clerk to be briefed on the mechanics of separate enrollment. We did a little experiment where we took the Commerce, Science, and Justice bill, which is the largest appropriations bill that was passed last year, just as a trial run, and we broke it up into some 500 pieces of separate enrolled legislation.

I think to ask the President to sign a bill 500 times is a chore. I also believe that to allow tens of billions of dollars of wasteful and unwanted spending to be included, tucked into various appropriations bills, is a far more serious and grievous error.

In another provision of the bill is the sunset provision, which would sunset this line-item veto authority after 5 years. I was not particularly happy about that provision, Mr. President, but there are those on both sides of the aisle that view this for what it is—a significant shift in authority from the legislative to the executive branch.

There are concerns about abuse of this power. So they want an opportunity to review the results of the enactment of this legislation after a 5-year period.

Frankly, I think that that is appropriate. That is another aspect of it.

The final aspect of it, Mr. President, that is going to be debated and be significantly involved is the targeted tax benefits. The targeted tax benefits allows the President to eliminate specific targeted tax benefits. These are rightful shots for transition benefits that help but a few that are not applicable to the general population.

The bill states clearly, and I quote from the legislation:

> (5) The term ''targeted tax benefit'' means any provision:
>
> (A) estimated by the Joint Committee on Taxation as losing revenue within the period specified in the most recently adopted concurrent resolution on the budget . . .
>
> (B) having the practical effect of providing more favorable tax treatment to a particular taxpayer or limited group of taxpayers when compared with other similarly situated taxpayers.

What that means, Mr. President, is that we are trying to avoid the so-called transition rules in which tax breaks are included for favored individuals or companies. We are trying to avoid things like what happened—and I quote from a New York Times article of May 20, 1994:

> A case in point is a provision that would allow some homeowners who rent their homes for a brief period to continue to escape taxes on their rental income. . . .
>
> Since 1976, income from homes and apartments rented for 15 days a year or less has been tax free. No one now in Congress knows for sure, but the word in tax circles for years is this was put into the law for the benefit of people who live in and around Augusta, GA, and who rent their homes for thousands of dollars each April for the Masters golf tournament. At the time that the measure went into the Tax Code, Herman E. Talmadge, Democrat of Georgia, was the second-ranking Senator on the Finance Committee.
>
> This year, to raise money to offset various tax cuts, the House decided to abolish the 15-day rule. But one narrow exception was provided. The rent would still not be taxable if the home was in an area where there was not enough hotel or motel space to accommodate visitors at a particular event. . . .
>
> The folks in Atlanta who are planning housing for the 1996 Olympics this summer are quite pleased with the outcome.

Mr. President, we cannot do that anymore. There is going to be an argument to expand this provision to basically any tax provision in the tax law, in tax bills that are passed.

I think that would be very dangerous. I believe that if we did that, then that would give the President of the United States the ability to veto things like home mortgage deductions, medical expenses deductions, child care tax credit, exclusion from income of employer-provided health care benefits, earned income tax credit, personal exemption, special exemption for the blind, special exemption for the elderly, et cetera, including charitable contribution deductions and State and local tax deductions.

The bill is intentionally narrowly focused on targeted tax benefits to prevent the same kind of abuses that have become rampant in the appropriations process.

I want to point out again and again and again, Mr. President, two-thirds versus a simple majority is the crux of this bill.

We asked for an opinion by the Congressional Research Service on the constitutionality of separate enrollment. There is a Congressional Research Service memorandum to the Honorable DAN COATS from Mr. Johnny H. Killian, who is a senior specialist in American consultant law. The subject is separate enrollment bill and the Constitution.

It is a little long, but I think it is important enough to ask unanimous consent that it be printed in the RECORD, and I ask unanimous consent to print it in the RECORD.

There being no objection, the memorandum was ordered to be printed in the RECORD, as follows:

CONGRESSIONAL RESEARCH SERVICE,
THE LIBRARY OF CONGRESS,
Washington, DC, March 20, 1995.

To: Hon. Dan Coats. Attention: Megan Gilley.

From: American Law Division.

Subject: Separate enrollment bill and the Constitution.

This memorandum is in response to your request for a constititional analysis of the draft substitute for the various item veto-rescission proposals now pending in the Senate. Briefly, your substitute would direct that the appropriations committees, the authorization committees in designated cases, and conference committees in designated cases to include within their bills reported to the House of Representatives or the Senate a level of detail on the allocation of an item of appropriation (or other authority) as is proposed by that House such as is set forth in the committee report accompanying such bill. The substitute then provides for separate enrollment of the designated bills, once passed by both Houses in identical language, as is detailed below.

Discussion here is of particular problems relating to passage of the separated bills, insofar as constitutional issues are raised. We do not deal in this memorandum with the larger issues of separate enrollment and the item veto.[1] In a considerable amount of published material since the preparation of the two memoranda, cited in n. 1, separate enrollment has not been dealt with, the controversy exciting much of the writing being the dispute over the assertion that the President already has the power of item veto if he would but use it.[2] Discussion of that subject we also pretermit. It is to the constitutionality of the mechanics of the proposal's implementation that we turn.

Under the proposal, once an appropriations bill and any authorization bill or resolution providing direct spending or targeted tax benefits has passed both Houses of Congress in the same form, the Secretary of the Senate (if the bill or joint resolution originated in the Senate) or the Clerk of the House of Representatives (if the bill or joint resolution originated in the House of Representatives) would cause the enrolling clerk of such House to enroll each item of appropriation or covered authorization as a separate bill or joint resolution. The separately enrolled measure is to be enrolled without substantive revision, is to conform in style and form to the applicable provisions of chapter 2 of title 1 of the United States Code, and is to bear the designation of the measure of which it was previously a part plus such other designation as to distinguish it from the other items separately enrolled from the same bill. The critical provision then is the following excerpted section.

''A measure enrolled pursuant to [this act] with respect to an item shall be deemed to be a bill under clauses 2 and 3 of section 7 of article I of the Constitution of the United States and shall be signed by the Speaker of the House and the President of the Senate, or their designees, and presented to the President for approval or disapproval (and otherwise treated for all purposes) in the manner provided for bills and joint resolutions generally.''

Constitutional difficulty for the separate-enrollment proposal may be raised by the effectuation of this section. At present, when both Houses have passed a bill in the same form, it is presented by the last House acting on it to a specially appointed clerk for enrolling. Bills and joint resolutions are enrolled, and the enrolling clerk is to make no change, however unimportant, in the text of a bill or joint resolution, although the two Houses may, by concurrent resolution, authorize the correction of errors when enrollment is made. Following enrollment, the Speaker of the House of Representatives and the President of the Senate sign the bill, and it is then presented to the President.[3]

How is it, then, it may be asked, that separate bills, which in their subsequent form have not passed both Houses, may be deemed bills that have passed both Houses and are then properly presented to the President? It is not possible to make a definitive answer to this question. Sound precedent is lacking. However, one may, on the basis of existing precedents and general principles derived from the rule-making powers of both Houses, develop two possible resolutions to the quandary that will be suitable in form for each House to make its own constitutional determination.

Each House of Congress is empowered to ''determine the Rules of its Proceedings,'' Art. I, §5, cl. 2. The authority is quite broad and leaves much to the discretion of each House, but it is not limitless. *United States* v. *Ballin*, 144 U.S. 1 (1892). In that case, the House of Representatives had adopted a rule to break the obstruction of some Members who would deny the existence of a quorum to do business by, though present, refusing to vote or otherwise indicating their presence for purposes of determining a quorum. The rule authorized the Speaker to have the names of nonvoting Members recorded and the Members counted and announced in determining the presence of a quorum. When the rule was challenged, by those asserting that a bill was not passed with a sufficient quorum present, the Court rejected the attack.

''The Constitution empowers each house to determine its rules of proceedings. It may not by its rules ignore constitutional constraints or violate fundamental rights, and there should be a reasonable relation between the mode or method of proceeding established by the rule and the result which is sought to be attained. But within these limitations all matters of method are open to the determination of the house, and it is no impeachment of the rule to say that some other way would be better, more accurate or even more just. It is no objection to the validity of a rule that a different one has been prescribed and in force for a length of time. The power to make rules is not one which once exercised is exhausted. It is a continuous power, always subject to be exercised by the house, and within the limitations suggested, absolute and beyond the challenge of any other body or tribunal.'' Id., 5.

Inasmuch as the Constitution required a quorum to do business but prescribed no method of making the determination of the existence of a quorum, ''it is therefore within the competency of the house to prescribe any method which shall be reasonably certain to ascertain the fact.'' Id., 6. The Court then listed several methods the House might have used. ''Any one of these methods, it must be conceded, is reasonably certain of ascertaining the fact, and as there is no constitutional method prescribed, and no constitutional inhibition of any of those, and no violation of fundamental rights in any, it follows that the house may adopt either or all, or it may provide for a combination of any two of the methods.'' Ibid. *Ballin*, thus, stands for the proposition that the power of the Senate and the House of Representatives is quite broad and that the Court will defer in large measure; but by its phrasing, the Court clearly said that it has power to review rules and their application, if there are constitutional inhibitions in existence or if private rights are alleged to be abridged.

That judicial review of congressional rules may be an expansive power is illustrated by *United States* v. *Smith*, 286 U.S. 6 (1932), an opinion by Justice Brandeis. *Smith* concerned the meaning of a disputed rule of the Senate. The Senate has confirmed an appointee to the FPC, the President had been notified, the commission was signed, and Smith took office. The Senate then requested that the nomination be returned for reconsideration; upon the President's refusal, the Senate nonetheless voted again and refused confirmation. The Senate relied upon a role that it construed to authorize such reconsideration.

''The question primarily at issue,'' the Court said, ''relates to the *construction* of the applicable rules, *not to their constitutionality*,'' Id., 33 (emphasis supplied). The supposed *Ballin* limits were passed. ''As the construction to be given to the rules affects persons other than members of the Senate, the question presented is of necessity a judicial one.'' Ibid. While the Court purported to give great deference to the Senate's construction of its rules, it read the text of the rules, the history and precedents, and the mischief attendant on the Senate's construction to interpret the rules as precluding reconsideration of the appointment. Id., 35–49.[4]

Other cases to be noticed are *Christoffel* v. *United States*, 338 U.S. 84 (1948), and *Yellin* v. *United States*, 374 U.S. 109 (1963), both relating to the practice of investigating committees in following House rules, *Christoffel* involved the question whether the fact that a quorum existed at the beginning of a hearing created the presumption that a quorum continued throughout, including when perjured statements were made, as the house contended. The Court held that it must be shown that a quorum was actually present when the perjury was committed. In *Yellin*, the Court set aside a contempt-of-Congress conviction, because it found the committee had failed to follow its rules, rejecting the argument that under the congressional interpretation of the rules the rules were followed.

The Court of Appeals for the District of Columbia Circuit has long emphasized that the rulemaking clause ''creates a 'specific constitutional base' which requires [the courts] to 'take special care to avoid intruding into a constitutionally delineated prerogative of the Legislative Branch.'' *Vander Jagt* v. *O'Neill*, 699 F.2d 1166, 1173 (D.C.Cir. 1982) (quoting *Harrington* v. *Bush*, 553 F.2d 190, 214 (D.C. 1977)), *cert. den.*, 464 U.S. 823 (1983); *Metzenbaum* v. *FERC*, 675 F.2d 1282, 1287 (D.C.Cir. 1982). Nevertheless, the *Vander Jagt* court dismissed the action, brought by minority-party Members of Congress to contest the party distribution of committee seats, only because it felt the Members had alternative routes to political relief. In *Gregg* v. *Barrett*, 771 F.2d 539 (D.C.Cir. 1985), after dismissing Members as plaintiffs in a suit challenging the accuracy of the Congressional Record, the Court reached the merits of the suit on behalf of private plaintiffs, although it decided against them. And, quite recently, in *Michel* v. *Anderson*, 14 F.3d 623 (D.C.Cir. 1994), the court reviewed on the merits (finding constitutional) the changes in House rules permitting delegates from the territories and the District of Columbia to vote in the Committee of the Whole, subject to revoting in certain instances.[5]

Thus far, we have established that the rule-making power of each House is broad and is entitled to judicial deference, although if there is a constitutional barrier to a particular rule or impairment of a private right there may well be a judicial remedy. We must, therefore, turn to the exercise of the rule-making power of each House in the specific context of the enactment of the separately-enrolled bills.

Footnotes at end of article.

Beginning that consideration leads us to *Marshall Field & Co.* v. *Clark*, 143 U.S. 649 (1892), decided the same Term as *Ballin*. In *Clark*, certain parties challenged the validity of a tariff law, authenticated by the Speaker of the House and the President of the Senate as having passed Congress, signed into law by the President, and furnished to the Public Printer by the Secretary of State as a correct copy of the law. It was contended that the bill had not been passed because congressional documents showed that a section of the bill, as it finally passed, was not in the bill authenticated by the signatures of the two officers and approved by the President. The holding of the Court was that the judiciary may not look behind the authenticating signatures of the Speaker of the House and the President of the Senate. Its reasoning requires lengthy quoting.

''The argument . . . is, that a bill, signed by the Speaker of the House of Representatives and by the President of the Senate, presented to and approved by the President of the United States, and delivered by the letter to the Secretary of State, as an act passed by Congress, does not become a law of the United States if it had not in fact been passed by Congress. In view of the express requirements of the Constitution the correctness of this general principle cannot be doubted. There is no authority in the presiding officers of the House of Representatives and the Senate to attest by their signatures, nor in the President to approve, nor in the Secretary of State to receive and cause to be published, as a legislative act, any bill not passed by Congress.

''But this concession of the correctness of the general principle for which the appellants contend does not determine the precise question before the court; for it remains to inquire as to the nature of the evidence upon which a court may act when the issue is made as to whether a bill, originating in the House of Representatives or the Senate, and asserted to have become a law, was or was not passed by Congress. Id., 669–670.''

The challengers asserted that courts should recur to the journal required to be kept by the Constitution. Art I, §5, cl. 3. But the Court denied that the journal was the best, if not conclusive, evidence upon the issue of whether a bill, in the same form, was, in fact, passed by the two Houses of Congress. The purpose of the requirement was not related to this function, and there was no express requirement in the Constitution relating to this question and others pertaining to bills and joint resolution for inclusion in the journal. These and other matters were left to the discretion of Congress. To what should the courts look?

''The signing by the Speaker of the House of Representatives and by the president of the Senate, in open session, of an enrolled bill, is an official attestation by the two houses of such bill as one that has passed Congress. It is a declaration by the two houses, through their presiding officers, to the president, that a bill, thus attested, has received, in due form, the sanction of the legislative branch of the government, and that it is delivered to him in obedience to the constitutional requirement that all bills which pass Congress shall be presented to him. And when a bill, thus attested, receives his approval, and is deposited in the public archives, its authentication as a bill that has passed Congress should be deemed complete and unimpeachable. As the President has no authority to approve a bill not passed by Congress, an enrolled act in the custody of the Secretary of State, and having the official attestations of the Speaker of the House of Representatives, of the President of the Senate, and of the President of the United States, carries, on its face, a solemn assurance by the legislative and executive departments of the government, charged, respectively, with the duty of enacting and executing the laws, that it was passed by Congress. The respect due to coequal and independent departments requires the judicial department to act upon that assurance, and to accept, as having passed Congress, all bills authenticated in the manner stated; leaving the courts to determine, when the question properly arises, whether the act, so authenticated, is in conformity with the Constitution.'' Id., 672.

Upon the correct interpretation of *Clark* and the convergence of *Clark* and *Ballin*, we suggest, may be found the solution to the issue of the validity of the passage of a series of bills after the passage of the one bill from which the many bills are extracted. The difficulty is that it is not clear what the correct interpretation of *Clark* is; below, we set out three possibilities and evaluate them.

First, *Clark* may be read as simply holding that the ''best evidence'' of whether a bill had passed both Houses may be found in the signatures of the Speaker of the House and the President of the Senate. The Court would not allow challengers to use the Journal or other legislative evidence to counter the attesting signatures. In a very recent decision, the Court, in part, casually adopted this reading of *Clark*, but it did so in a footnote that also ambiguously appears to go beyond that simple explanation. *United States* v. *Munoz-Flores*, 495 U.S. 385, 391 n. 4 (1990).[6] Inasmuch as that footnote is relevant here and will be relevant in a subsequent portion of this memorandum, we here quote the entire pertinent parts of the footnote.

''[*Clark*] concerned ''the nature of the evidence'' the Court would consider in determining whether a bill had actually passed Congress. Id. [143 U.S.], at 670. Appellants had argued that the constitutional Clause providing that ''[e]ach House shall keep a Journal of its Proceedings'' implied that whether a bill had passed must be determined by an examination of the journals. . . . The Court rejected that interpretation of the Journal Clause, holding that the Constitution left it to Congress to determine how a bill is to be authenticated as having passed. Id., at 670–671. In the absence of any constitutional requirement binding Congress, we stated that ''[t]he respect due to coequal and independent departments'' demands that the courts accept as passed all bills authenticated in the manner provided by Congress. Id., at 672. Where, as here, a constitutional provision is implicated, *Field* does not apply.''

Should *Clark* be taken to be simply about what is the ''best evidence'' that a bill passed both Houses, then in practically all instances the attesting signatures will be decisive. However, respecting the proposals for a separate enrollment following adoption of a single bill and its division into many bills, with these multiple bills being ''deemed'' to have passed both Houses, it is possible that the courts would adopt a different view. Because both Houses have adopted rules that expressly provide for a separate enrollment, deeming, and the attestation signatures, the courts could exercise judicial review to consider on the merits the rules and their comportment with the Constitution, viewing the signatures of the two officers as essentially irrelevant in the context of this particular situation.

Adoption of this reading of *Clark*, with an exception, would not void the rules thus adopted. It would simply mean that the courts would review the rules on the merits.

Second, *Clark* may be read much more broadly than merely as a best evidence rule. The paragraph quoted in full above from *Clark* does not read as if it is a decision placing a burden of persuasion on some person or at some point. Rather, the passage has the flavor of a ''political question'' approach to a constitutional issue. ''The respect due to coequal and independent departments requires the judicial department to act upon that assurance, and to accept, as having passed Congress, all bills authenticated in the manner stated. . . .'' *Clark*, supra, 143 U.S., 672, See *baker* v. *Carr*, 369 U.S. 186, 217 (1962) (Identifying the features that identify political questions, including ''the impossibility of a court's undertaking independent resolution [of an issue] without expressing lack of respect due coordinate branches of government''). See also *INS* v. *Chadha*, 462 U.S. 919, 941 (1983) (quoting *Baker*); *Nixon v. United States*, 113 S.Ct. 732, 735 (1993) (quoting two of the other standards of *Baker*). Indeed, in *Baker*, itself, the Court viewed *Clark* as a political question case.[7] The political-question doctrine is ''essentially a function of the separation of powers.'' *Baker* v. *Carr*, supra, 217.

Baker, of course, is qualified in a number of respects. ''Our system of government requires that federal courts on occasion interpret the Constitution in a manner at variance with the construction given the document by another branch. The alleged conflict that such an adjudication may cause cannot justify the courts' avoiding their constitutional responsibility.'' *Powell v. McCormack*, 395 U.S. 486, 549 (1969). In that case, the action of the House of Representatives in excluding a Member-elect from office was reviewed and overturned, because the Court determined that there was a constitutional provision governing resolution of the matter, a clause establishing exclusive qualifications that the House had violated. See also *United States v. Munoz-Flores* supra, 495 U.S., 389–396 (refusing to find a political question bar to judicial resolution to whether a revenue-raising measure did not originate in the House of Representatives, as required by the origination clause).

Nonetheless, the political-question doctrine remains alive if restrained in the courts. For example, in *Nixon* v. *United States*, supra, 113 S. Ct., 735–740, the Court refused to review, using the political-question doctrine, a claim by an impeached federal judge that the Senate had used invalid procedures in trying him. Under the impeachment clause, Art. I, §3, cl. 6, ''[t]he Senate shall have the sole Power to try all Impeachments.'' Under a rule of the Senate, a special committee of Senators is appointed to ''receive and report evidence.'' After hearings, the committee submits a transcript and summary of its proceedings to the Full Senate, which then conducts a trial. Nixon argued that the special-committee procedure denied him a trial before the full Senate. Applying two standards from the *Baker* list, the Court found that the word ''sole'' in the clause was a textual commitment of authority to the Senate to act *alone* without court review; further, the Court found the word ''try'' in the clause was sufficiently indefinite to cabin the Senate's discretion, thus using the lack of judicially-manageable standards factor of *Baker*. See also id., 738–739 (referring to other *Baker* factors).

Superficially, the application of the political-question doctrine in this context is contrary to *INS* v. *Chadha*, supra, 462 U.S., 940–943. That decision denied that a challenge to the legislative veto presented a political question, and on the merits the Court went on to hold that for a congressional measure to have legal effect outside Congress it must be acted on bicamerally and when passed in identical terms by both Houses must be presented to the President. The Court provided a truncated version of the quotation from *Clark*, which we quoted above, to reject the argument that the issue presented a politcal

question. It did not consider the issue of the effect of attesting signatures by the two congressional officers, and it could not have done so because only bills and joint resolutions are enrolled, signed, and presented to the President. The simple resolution before the Court in *Chadha* was not enrolled, signed, and presented to the President, and neither was the concurrent resolution in question in two-House legislative vetoes.[8]

Chadha, thus, was a case in which by statute congressional actions having legal impact outside Congress were provided for in which, in some instances two-House actions were authorized, in others one-House actions, and none of the resolutions or concurrent resolutions was presented to the President. *Chadha* is, therefore, of no precedential value in this context, although it must be considered below.

If, under the political-question doctrine, courts will not look behind the attestation signatures of the Speaker and the President of the Senate, then Congress may provide for ''deeming'' the passage of the separated bills without fear of judicial review. This situation does not mean that Congress is free of constitutional constraints. Members of Congress take an oath, identical to the one taken by judges, to support the Constitution, Art. VI, cl. 3, and Members of Congress must determine for themselves that a measure upon which they are voting is constitutional, *United States* v. *Munoz-Flores,* supra, 495 U.S., 390–391, just as the President must before he signs a bill. But it does mean that Congress' constitutional determination is not susceptible to judicial invalidation.

When Congress studies the constitutionality of a proposal, it performs essentially the same analysis as a court does, and we now turn to the issue of the merits.

Third, assuming the inapplicability of the political-question doctrine, when either a court or Congress evaluates the validity of the deeming mechanism, what should the decision be?

Beyond question is the proposition that a measure must be passed in the same form by both Houses before it is presented to the President for his action; no bill not meeting this qualification can become law. *Clark,* supra, 143 U.S. 669–670, *INS* v. *Chadha,* supra, 462 U.S., 943, 944–946, 948–951, 956–959. And that is precisely the question presented by this proposal. A bill has passed both Houses in identical terms, and it is then subdivided into a series of bills excerpted out of the larger bill by an enrolling clerk acting pursuant to the rules of the two bodies. If the separately-enrolled bills are not again presented to both Houses for a vote, perhaps an en bloc consideration, has the bicameralism requirement been met.

That each House has the power to make the rules for its own proceedings is a substantial authority, as *Ballin* certainly demonstrates. There, the Constitution required a quorum to do business, but the Constitution was silent with respect to how a quorum was to be determined. Members present declined to answer to a call of the roll to permit a determination that a quorum was present, and the House of Representatives simply provided that they would nonetheless be counted.

When the House of Representatives or the Senate determines its rules of proceeding, the *Ballin* Court instructed us, ''[i]t may not by its rules ignore constitutional restraints or violate fundamental rights, and there should be a reasonable relation between the mode or method of proceeding established by the rule and the result which is sought to be attained.'' *Ballin,* supra, 144 U.S., 5. Within this capacious concept, what provision of the Constitution would the ''deeming'' provision violate? We certainly cannot point to any fundamental right that is abridged. The constitutional constraint that is applicable is the first section of Article I, which sets a bicameral requirement for the exercise of lawmaking. But Congress in the proposal does not disregard the bicameralism mandate. A bill in identical form has passed both Houses. Then, a functionary, the enrolling clerk, follows instructions embodied in the rules and separates out of this bill a series of sections identical to the sections contained in the larger bill and enrolls these sections into separate bills; these bills are signed by the Speaker of the House and the President of the Senate, and these bills are then presented to the President for his signatures or his vetoes.

One can readily see that the question is much more narrow than the mere issue whether Congress can pass a law that has not cleared both Houses in identical versions. A bill has passed both Houses in an identical version. The separately enrolled bills, *taken together,* are identical to that initial bill. If Congress should conclude that this two-step process comports with the constitutional requirement of bicameral passage of a legislative measure, in what way has a constitutional restraint been breached?

If the ''deeming'' procedure is invalid, the validity of the deeming feature of Rule XLIX of the House of Representatives is highly suspect. Under that Rule, adoption by the House of Representatives of the conference report on the concurrent resolution on the budget, or on the concurrent resolution itself if there is no conference report, is deemed to be a vote in favor of a joint resolution setting a statutory limit on the public debt, different than the limit then in effect, and the joint resolution is engrossed and transmitted to the Senate. There is no precise equivalency between the Rule and the proposal; yet, there is sufficient identify to present the same constitutional question.

In some respects, as we briefly touch on below, the appropriations committees, and perhaps some legislative committees, may have to alter how they report bills that are to be subject to this process, inasmuch as to continue the present mode of bill drafting would require the enrolling clerk[s] to exercise too much judgment, too much discretion,in breaking down the bills, with the result that to make sense of some sections designated as separate bills, these bills would not be identical to the bill previously passed. This reservation is meant only to suggest that some separate enrollments might present an as-applied constitutional challenge. We are here concerned with the facial constitutional questions.

Issues of validity could also be influenced in determination by two other factors. That is, first, Congress is not seeking to aggrandize itself or to infringe on the powers of another branch. Instead, the procedure would be, in effect, and act of self-abnegation, a giving-up of some degree of congressional power and influence in order to enlarge the power and influence of the President and to lodge in him the burden of deficit reduction. Second, to forestall the argument that Congress might have invalidly given up too much power, might have over-balanced presidential power, it must be observed that these rules are entirely an internal matter, subject to alternation by simple resolution at any time in either House. There is no irrevocable conveying away.

Finally, as we suggested above, it may be necessary for the appropriations committees to revamp the mode of reporting bills. In addition to the necessity to achieve identify between the original bill and the separated bills, to leave to the enrolling clerk[s] too much discretion might violate the principle, found in some cases, that Congress may not delegate its legislative power to its Members or its officers and employees. The legislative power is a collective one to be exercised by Congress itself and not by delegates. *Metroplitan Washington Airports Auth.* v. *Citizens* for the Abagtement of Aircraft Noise, 501 U.S. 252, 271–277 (1991). The details of this revamping remain open for consideration.

In conclusion, we have argued that the deeming procedure may present a political question unsuited for judicial review and thus that Congress would not be subject to judicial review. We have considered, on the other hand, that the courts may find they are not precluded from exercising authority to review this proposal. If the proposal is reviewed by the courts, and even if it is not, we have presented an argument leading to sustaining the deeming procedure as not in violation of the principle that a bill, in order to become law, must be passed in identical versions by the House of Representatives and the Senate. Because of the lack of available precedent, we cannot argue that any of the three versions of the argument is indisputably correct; indeed, there are questions about all three. In the end, Congress must exercise a constitutional judgment when deciding on passage of the proposal.

JOHNNY H. KILLIAN,
Senior Specialist,
American Constitutional Law.

FOOTNOTES

[1] In an older memorandum Killian, *Constitutionality of Empowering Item Veto by Legislation,* CRS, Jan 4, 1984, and as shorter follow-up memorandum, Killian, *Constitutional Questions Raised by S. 43 in Establishing Item Veto,* Jan, 15, 1985, reprinted in *Line Item Veto,* Hearings before the Senate Committee on Rules and Administration, 95th Cong., 1st Sess. (1985), 10–20, we discussed at some length the question of the line-item veto and whether it could be conferred on the President by statute, concluding that only through a separate-enrollment device would such a conferral be valid constitutionally. In those memoranda, we raised and discussed but were unable to decide the questions now being treated. The longer memorandum also appears, in essentially the same form, in *Item Veto: State Experience and Its Application to the Federal Situation, House* Committee on Rules, 99th Cong., 2d Sess. (Comm. Pr. 1986), 164.

[2] E.g., Rappaport, *The President's Veto and the Constitution,* 87 Nw., U. L. Rev. 735 (1983), which also cites a considerable number of articles on both sides of the issue.

[3] Constitution, Jefferson's Manual and Rules of the House of Representatives, H. Doc. No. 102–105, 102d Cong., 2d sess. (1993), §§573–574; 7 L. Deschler's Precedents of the United States House of Representatives, H. Doc. No. 94–661, 94th Cong., 2d Sess. (1977), ch. 24, §14.

[4] Compare *Missouri Pac. Ry. Co.* v. *Kansas,* 248 U.S. 276 (1919), in which, although it found justiciable an issue regarding a congressional rule, the Court deferred much more to the legislative construction than it did in *Smith.*

[5] See *United States ex rel. Joseph* v. *Cannon,* 642 F.2d 1373 (D.C.Cir. 1981) (dismissing suit under False Claims Act based on use of senatorial employees in political campaigns on the ground that Senate had developed no standards by which court could determine whether Act had been violated, reserving question whether it could enforce Senate rules even if consensus had been reached), *cert. den.* 455 U.S. 999 (1982); *Ray* v. *Proxmire,* 581 F.2d 998, 1001 (D.C.Cir.) (finding a Senate rule created no private cause of action and reserving whether a Senate rule ever could), *cert. den* 439 U.S. 933 (1978).

[6] The Court was responding to a concurrence by Justice Scalia that adopted a broad reading of *Clark,* in which he would have declined to reach the merits of an origination clause challenge to a law and would have instead accepted the attesting signatures of the Speaker of the House and the President of the Senate as showing that the bill, bearing a House of Representatives designation, had in fact originated in the House. Id., 408. The origination clause is Art. I, §7, cl. 1.

[7] ''In *Coleman* v. *Miller,* [307 U.S. 433 (1939)], this Court held that the questions of how long a proposed amendment to the Federal Constitution remained open to ratification, and what effect a prior rejection had on a subsequent ratification, were committed to congressional resolution and involved criteria of decision that necessarily escaped the judicial

grasp. Similar considerations apply to the enacting process: ''The respect due to coequal and independent departments,'' and the need for finality and certainty about the status of a statute contribute to judicial reluctance to inquire whether, as passed, it complied with all requisite formalities. [Citing *Clark*, supra, 143 U.S., 672, 676–677; and also *Leser* v. *Garnett*, 258 U.S. 130, 137 [1922] (applying *Clark* to refuse to look behind certifications by two States that they had ratified a constitutional amendment; official notice ''is conclusive upon the courts)].

[8] See *Consumers Union* v. *FTC*, 691 U.S. 575 (D.C.Cir. 1982), *affd. sub nom. Process Gas Consumers Group* v. *Consumer Energy Council*, 463 U.S. 1216 (1983).

Mr. MCCAIN. Mr. President, I will read the concluding paragraph and urge my colleagues to read the entire opinion. Mr. Killian obviously is a well-known and well-respected specialist on American constitutional law. He states in the final paragraph:

In conclusion, we have argued that the deeming procedure may present a political question unsuited for judicial review and thus that Congress would not be subject to judicial review. We have considered, on the other hand, that the courts may find they are not precluded from exercising authority to review this proposal. If the proposal is reviewed by the courts, and even if it is not, we have presented an argument leading to sustaining the deeming procedure as not in violation of the principle that a bill, in order to become law, must be passed in identical versions by the House of Representatives and the Senate. Because of the lack of available precedent, we cannot argue that any of the three versions of the argument is indisputably correct; indeed, there are questions about all three. In the end, Congress must exercise a constitutional judgment when deciding on passage of the proposal.

I want to repeat, again:

In the end, Congress must exercise a constitutional judgment when deciding on passage of the proposal.

There will be views expressed by my colleagues that, indeed, there is a question about constitutionality, and they may argue that that is a reason for opposing this legislation. I will respect their views. I, however, will not agree.

Mr. President, in this morning's Washington Times, there is an article by Mr. Stephen Moore, who is the director of fiscal policy studies at the Cato Institute. As we all know, the Cato Institute is a well-regarded organization and one that is dedicated to many causes, including fiscal responsibility.

Mr. President, I will read some parts of this article because I think it is important, and I ask unanimous consent that this article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington Times, Mar. 21, 1995]

SHARPENING THE BUDGET SCISSORS

(By Stephen Moore)

This week the Senate begins debate on the line-item veto for the president, Taxpayers have been demanding this act of fiscal sanity for at least 15 years.

Now, there they go again, Just when it appeared that the line-item veto would become a reality, several moderate Senate Republicans are lining up with liberal Democrats to submarine the effort by insisting upon a line-item veto with a dull blade. Yet the experience of the states—where 43 governors have line-item veto authority—indicates that weakened versions of this budget cutting instrument are almost the equivalent of no-item veto at all. The GOP needs to band together to block this fraudulent alternative and rally behind the toughest measure possible—the Coats-McCain bill.

Once during the last year of the Reagan administration I was asked to testify on the line-item veto before the House Judiciary Committee. It was a miserable experience. One Democrat after another savaged the idea as nothing more than a blatant partisan power-grab. There message was unmistakable: Reaganites are trying to pull an end run around the Democrat-controlled Congress because they can't win at the polls.

In hindsight, it is understandable why House Democrats thought that way. Republicans seemed to have a permanent electoral padlock on the White House, while the notion of a GOP Congress seemed as improbable as the Speaker of the House and the chairman of the Ways and Means Committee being ejected from office in the same year. How ironic that the first president to snip spending with the new veto scissors may well be Democrat Bill Clinton, and he will be empowered to do so by a Republican-controlled Congress. So much for the partisan power-grab argument.

Now opponents have shifted gears. Today, we hear two new objections to the line-item veto—both of which are also wrong. The first argument is that the line-item veto would involve a huge and unprecedented power shift in the direction of the White House. Powerful Senate appropriators Robert Byrd and Mark Hatfield are endlessly preaching that message.

But history disproves it. The line-item veto is only a partial restoration of the rightful budgetary powers of the president, which were stripped from the executive branch by the 1974 Budget Act. That act took away the president's right to impound funds—a power that was exercised routinely by every president from Thomas Jefferson through Richard Nixon. Jefferson first employed the power to refuse to spend appropriated funds in 1801 when he impounded $50,000 for Navy gunboats.

The Founders believed that the president, as the head of the executive branch and therefore responsible for executing the laws and spending taxpayer funds judiciously, had unilateral authority not to spend money appropriated by Congress if that spending was unnecessary.

Impoundment was an extremely powerful White House authority that was exercised often for nearly 200 years. Presidents Roosevelt, Kennedy, Johnson and Nixon used the impoundment power rountinely—and in some years used it to cut federal appropriations by more than 5 percent. In one year, Richard Nixon impounded more than 7 percent of domestic appropriations.

In 1974 Congress stripped the president of his lawful impoundment powers and instead gave him two very weak substitutes: the deferral and rescission authorities. But rescissions require Congress affirmatively to approve a presidential request not to spend money. Most rescissions are simply ignored by Congress and never even voted on. Thus through congressional in action, they are killed. Twenty-six billion dollars of Ronald Reagan's rescissions were slain in that fashion.

The second criticism of the line-item veto is that it won't affect the level of spending or the debt. To test that supposition, the Cato Institute recently surveyed 118 governors and former governors about what budget process measures Washington should adopt to help balance the budget. Sixty-seven of the respondents were Republicans, 50 were Democrats, and one was an independent. Since 43 states have the line-item veto, governors are in the best position to assess its value. Some governors, such as Tommy Thompson of Wisconsin, have relied heavily on the line-item veto to cut expenditures and balance the budget.

The major findings of our survey were as follows:

Sixty-nine percent of the governors described the line-item veto as ''a very useful tool'' in helping balance the state budget.

Ninety-two percent of the governors believe that ''a line-item veto for the president would help restrain federal spending.''

Eighty-eight percent of the Democratic governors believed the line-item veto would be useful.

Then we asked the governors why they supported or opposed the line-item veto. Here are some of the more interesting responses we received:

Hugh L. Carey, the former Democratic governor of New York, said, ''I support the line-item veto because it is an executive branch function to identify budget excesses and wasteful items. It is an antidote for pork.''

Massachusetts governor William Weld wrote, ''Legislators love to be loved, so they love to spend money. Line-item veto is essential to enable the executive to hold down spending.''

Ronald Reagan said, ''When I was governor of California, the governor had the line-item veto, and so you could veto parts of the spending in a bill. The president can't do that. I think, frankly—of course, I'm prejudiced—government would be far better off if the president had the right of line-item veto.''

Mike O'Callaghan, the former governor of Nevada, and a Democrat, was the most concise: ''The line-item veto is a tremendous tool for saving money.''

Critics are right when they complain that the line-item veto won't balance the budget. But a useful way to determine potential budget savings from the line-item veto is to look at rescissions that have been ignored by Congress in recent years. If those had been approved, savings would have been $5 billion to $10 billion a year in less shark research, lower sugar subsidies, and fewer grants for obscene art.

And for those who still doubt the virtue of the line-item veto, perhaps the most compelling case for this surgical tool is made by Messrs. Byrd and Hatfield. Their violent opposition should provoke a deep appreciation for the value of these new fiscal scissors.

Mr. MCCAIN. Mr. President, Mr. Moore's article begins:

This week the Senate begins debate on the line-item veto for the President. Taxpayers have been demanding this act of fiscal sanity for at least 15 years.

Now, there they go again. Just when it appeared that the line-item veto would become a reality, several moderate Senate Republicans are lining up with liberal Democrats to submarine the effort by insisting upon a line-item veto with a dull blade.

Mr. Moore wrote this article before we, all 54 Republicans, agreed to vote for cloture to cut off debate on this issue.

Yet the experience of the States—where 43 Governors have line-item veto authority—indicates that weakened versions of this budget-cutting instrument are almost the equivalent of no-item veto at all. The GOP needs to band together to block this fraudulent alternative and rally behind the toughest measure possible—the Coats-McCain bill.

He goes on to say:

Now opponents have shifted gears. Today, we hear two new objections to the line-item veto—both of which are also wrong. The first argument is that the line-item veto would involve a huge and unprecedented power shift in the direction of the White House. Powerful Senate appropriators . . . are endlessly preaching that message.

But history disproves it. The line-item veto is only a partial restoration of the rightful budgetary powers of the President, which were stripped from the executive branch by the 1974 Budget Act. That act took away the President's right to impound funds—a power that was exercised routinely by every President from Thomas Jefferson through Richard Nixon. Jefferson first employed the power to refuse to spend appropriated funds in 1801 when he impounded $50,000 for Navy gunboats.

Mr. President, time after time on this floor, and I am sure during the course of this debate I will point out again, it is not a coincidence that up until 1974, revenues and expenditures on the part of the Federal Government basically were in sync. There were times of war when we ran up huge deficits, but after those emergencies subsided, we again brought the budget into balance. It was in 1974 when the two began to diverge to an incredible degree.

I want to point out again, and it is not coincidental, in 1974, the entire annual deficit for that year was $6 billion. The entire national debt was $483 billion. Now in 1994, the annual deficit is $203 billion, about half of what the overall accumulated debt was, and the estimate of the total debt between 1974 and 1996 has risen from $483 billion to $5.299 trillion.

There is a direct correlation between the passage of the Budget Impoundment Act of 1974 and the exploding deficit and annual deficit and debt.

The Founders believed that the President, as the head of the executive branch and therefore responsible for executing laws and spending taxpayer funds judiciously, had unilateral authority not to spend money appropriated by Congress if that spending was unnecessary.

Impoundment was an extremely powerful White House authority that was exercised often for nearly 200 years. Presidents Roosevelt, Kennedy, Johnson, and Nixon used the impoundment power routinely—and in some cases used it to cut Federal appropriations by more than 5 percent. In 1 year, Richard Nixon impounded more than 7 percent of domestic appropriations.

In 1974, Congress stripped the President of his lawful impoundment powers and instead gave him two very weak substitutes: the deferral and rescission authorities. But rescissions require Congress affirmatively to approve a Presidential request not to spend money. Most rescissions are simply ignored by Congress and never even voted on. Thus through congressional inaction, they are killed. Twenty-six billion dollars of Ronald Reagan's rescissions were slain in that fashion.

The second criticism of the line-item veto is that it won't affect the level of spending or the debt. To test that supposition, the Cato Institute recently surveyed 118 Governors and former Governors about what budget process measures Washington should adopt to help balance the budget: 27 of the respondents were Republicans, 50 were Democrats, and 1 was an Independent. Since 43 States have the line-item veto, Governors are in the best position to assess its value. Some Governors, such as Tommy Thompson of Wisconsin, have relied heavily on the line-item veto to cut expenditures and balance the budget.

The major findings of our survey were as follows:

Sixty-nine percent of the Governors described the line-item veto as ''a very useful tool'' in helping balance the State budget.

Ninety-two percent of the Governors believed that ''a line-item veto for the President would help restrain Federal spending.''

Eighty-eight percent of the Democratic Governors believed the line-item veto would be useful.

Then we asked the Governors why they supported or opposed the line-item veto.

And some of the responses were very interesting.

I will not go through all of those answers, Mr. President except to say the article concludes by saying:

Critics are right when they complain that the line-item veto won't balance the budget. But a useful way to determine potential budget savings from the line-item veto is to look at rescissions that have been ignored by Congress in recent years. If those had been approved, savings would have been $5 billion to $10 billion a year in less shark research, lower sugar subsidies, and fewer grants for obscene art.

And for those who still doubt the virtue of the line-item veto, perhaps the most compelling case for this surgical tool is made by [others]. Their violent opposition should provoke a deep appreciation of the value of these new fiscal scissors.

Mr. President, I wish to address for a moment the issue of the constitutionality of several issues that are raised here, and there are a number of them. I will save some of them, but I wish to talk about the aspect of the constitutional objection, the objection that it is unconstitutional because it would change the Constitution, specifically the veto power, by act of Congress. The response is as follows:

Article I, Section 5 of the Constitution permits this procedure. Nothing in article I, section 7 is violated by this procedure. Under this proposal, all bills must be presented to the President. He may sign or veto all bills. He must return vetoed bills with his objections. Congress may override any veto with a two-thirds majority of each House.

Under article I, section 5, Congress possesses this power to define a bill. Congress certainly believes that it possesses this power since it and it alone has been doing so since the first bill was presented to the first President in the first Congress. If this construction of article I, section 5 is correct, the definition of a bill is a political question and not justiciable. ''Prominent on the surface of any case held to involve a political question is found a textually demonstrable Constitutional commitment of the issue to a coordinated political depart.'' Baker v. Carr, 369 U.S. 186 (1962). ''A textually demonstrable constitutional commitment'' of the issue to the legislature is found in ''Each house may determine the Rules of its Proceedings.'' If Congress may define as a bill a package of distinct programs and unrelated items, it can define distinct programs and unrelated items to be separate bills. Either Congress has the right to define a bill or it does not. Either this proposal is constitutional or the recent practice of Congress in forming omnibus bills containing unrelated programs and nongermane items is constitutionally challengeable. If the latter, the President would be well advised to bring such suit against the next omnibus bill.

Mr. President, there have been about 3 days of debate now. We are going into our 4th day. I have talked a great deal. The other side of the aisle has not chosen to talk too much about it. I urge my colleagues to take note of the fact that we are now open for amendments. If there are amendments, I urge my colleagues on both sides of the aisle to bring forth those amendments so they can be debated and voted on. And as I said, again, it is the intention on this side of the aisle expressed by the majority leader to dispose of this issue this week by means of cloture votes. At the same time, as to any substantive amendments and proposals, I believe there is sufficient time for them to be considered and voted on.

I note the presence of the Senator from Nebraska in the Chamber.

Mr. President, I yield the floor.

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. EXON. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MCCAIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. INHOFE). Without objection, it is so ordered.

Mr. MCCAIN. Mr. President, I yield to the Senator from Tennessee.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. THOMPSON. Mr. President, first of all I want to thank the Senator from Arizona, along with the Senator from Indiana, who has shown such leadership in this area for so many years. I welcome the opportunity to assist in the effort.

Mr. President, the debate is now joined on the line-item veto and we are hearing the arguments for and against. It has been joined before. It has been discussed many times in this body. Hopefully, this time it will pass. I think the time has come. The American people demand it and the country needs it.

It has been said that the line-item veto or enhanced rescissions will not in and of itself balance the budget. And that is certainly true. It will require a President who is willing to use the tool that is given to him, and use it firmly. And, I might add, it will also require a President who will not use it simply to reprioritize his own programs over those programs of the Congress.

But while we are debating the likely effectiveness of this issue, I think it is important that we remember why we are engaging in this debate at all, why the line-item veto is brought up again year after year in this body, the reason for its overwhelming popularity among

the American people and even the reason that for many people in this country it has now become a virtual battle cry.

Mr. President, the short answer is that it is because we as a people are struggling mightily in this country, some might even say desperately, for ways to restrain Congress from irresponsible spending, for ways to stop Congress from continuing down the road of fiscal irresponsibility and the eventual bankruptcy of the United States of America.

Congress, in times past, has shown that it cannot restrain itself. We continue to look at $200 billion deficits every year as far as the eye can see. We have debated in this body, over a period of 60 years or more, the need for a balanced budget. We have reached almost unanimous consensus, even in the debate over the balanced budget amendment, that, yes, indeed, we must move toward a balanced budget, we must exercise some fiscal restraint. Year after year over that period of time, we have passed resolutions calling for a balanced budget. We have required the President to submit budgets to Congress that were in balance. We even passed a law in 1979 making it the law of this land that the budget be balanced by 1981. And, of course, when 1981 rolled around, another substantial deficit. Even our own laws were ignored by us.

In 1981, Congress was concerned, the entire Nation was concerned, as the debate turned toward the fact that we were approaching a $1 trillion debt in this country. Those were dire circumstances.

Now we are approaching a $5 trillion debt. Not only have we failed legislatively, Mr. President, but we have proven that we cannot restrain ourselves by means of a constitutional amendment. The balanced budget amendment failed in this body, even though it enjoyed the overwhelming support of the American people.

Appeals to self-interest and fear and shortsightedness carried the day once again in this body. Social Security, the last refuge of those in Congress who panic at the very thought of putting the lid on the pork barrel, was trotted out once again, even though we all know that the greatest threat and the only threat to Social Security is to continue down the road of deficit spending, is to do nothing and maintain the pattern that we have maintained in this Congress for so many years, because we all know within a few years, it is going into the red and we must have the farsightedness to address that now.

This is part of what we are about today, Mr. President. Now, having failed legislatively, having failed to adopt a constitutional amendment, the American people are saying that we should at least give the President of the United States the opportunity to have the most egregious, the most unnecessary, and the most wasteful spending measures made a little bit more difficult—not to make them impossible—to make them a little bit more difficult by requiring Congress to come up with a two-thirds majority vote if they want to pass it. I suggest to you that this is, indeed, a modest proposal in light of the dire economic circumstances that we find ourselves in as a nation.

And so for the second time in less than a month, we come together on the floor of the Senate to debate whether or not we have the courage to take the first step toward economic responsibility and recovery or whether, once again, we are going to fail ourselves, fail our constituents and fail the next generation. We simply must do better.

For 33 of the last 34 years, the Federal Government has run deficits and our elected officials have not had the will to change that course. Our Federal Government has run a deficit every year for the past 25 years—an entire generation—and we have not taken steps to break this insidious, this persistent pattern. It took our Nation more than 205 years to reach a $1 trillion national debt, but it only took another 11 years to quadruple it. And still we lack the will.

Now, for the next 5 years at least, the President has proposed annual budgets in excess of $200 billion a year. This means for the next 5 years, the Nation will accumulate another trillion dollars of debt, debt that is stifling investment, cutting into productivity, debt that has changed us from a creditor nation to a debtor nation.

Our economic growth has been anemic and one day surely, as night follows day, if we continue this course of action, America will decline as a great power. The first warning shot of that decline perhaps has already been fired.

I am sure that we have all noted with concern the precipitous drop in the dollar against the German mark and the Japanese yen since the failure of Congress to pass the balanced budget amendment. I submit to you that this is no accident. For decades, the U.S. dollar has been the standard against which the value of all other currencies in this world are measured. For many nations, it has served as a reserve currency. As such, the dollar is used as a storehouse of value in exchange for goods and services the world over. Investors buy the dollar because the U.S. economy has had a long reputation for reliability and for stability. Important commodities, such as oil, are priced in dollars. Any country that wishes to import oil must pay in dollars. We have been fortunate in this respect because of the high value placed upon the dollar in making it attractive as an investment vehicle and, thus, giving us our ability to, in large part, finance our national debt with foreign dollars.

When our debt was a small percentage of the gross national product, we could afford deficit spending and the inflation that it produced, but now our mounting deficits scare away capital and the value of the dollar. My distinguished colleague from Colorado, Senator BROWN, demonstrated recently in stark relief before the Senate Banking Committee the fall of the value of the dollar against the yen and the mark when the President announced the Mexican bailout. But more importantly, he showed the clear and unmistakable drop in the dollar's value when the balanced budget amendment was defeated in the Senate of the United States. That drop occurred for only one reason—one reason and one reason only—and that is that the world's investors lost faith in the political leadership of this country to act as wise stewards of America's Treasury.

That loss of confidence, manifested by the recent drop in the dollar, will have an inflationary impact on our economy. Goods will become more expensive as the price of imported components rise. Americans traveling abroad will find it to be increasingly expensive. Finally, the drop in the dollar's value will likely cause interest rates to rise and further exacerbate our budget deficit.

We are deluding ourselves if we think that simply because of our great wealth and natural resources that we are immune from economic loss and that our reputation for economic stability and growth will make us immune. We cannot continue to draw on this much foreign investment to finance our deficit indefinitely, and we only have to look to our neighbors to the south to give us some indication of what can happen.

Mr. President, we are all aware that we have a system of checks and balances in this country, a system of separation of powers, and that there is a constant pulling and tugging between the executive and the legislative branches of Government for power and authority, and sometimes in our history, even ascendancy. This is right and proper because this was one of the most fundamental parts of the framework that our Founding Fathers put together in the operation of our Government.

Some say that the line-item veto would give too much authority to the President and take that system out of balance in favor of the President. However, I think that in viewing history that we must conclude on the contrary that the current legislation before this body would bring things more into balance.

In fact, the 1989 report of the National Economic Commission has suggested that ''the balance of power on budget issues has swung too far from the executive toward the legislative branch.''

Virtually all Presidents have impounded funds as a routine matter of their executive discretion to accomplish what they believe is efficiency of management and Government. In the 1950's and 1960's, disputes arose over the impoundment authority—in fact, disputes have gone back much further

than that—but during that particular period of time in our history, which resulted from the refusal of several Presidents to fund certain weapons systems, for example, to the full extent authorized by Congress. President Johnson made broad use of impoundment authority during his administration by deferring billions of dollars on spending in an effort to restrain inflationary pressures on the economy during that period of time.

Conflict over the use of impoundment has greatly increased, of course, during the Nixon administration. A moratorium was placed on many things that are currently on the table again and being debated and discussed. Ironically enough, subsidized housing programs, community development activities, certain farm programs—all were either suspended or eliminated altogether during that period of time by President Nixon.

However, by 1974, the Congress of the United States found not only a weakened President Nixon because of Watergate but, because of that same scandal, a weakened Presidency, and employing a vacuum, Congress moved in and asserted itself and responded by passing the 1974 Budget Control and Impoundment Act, which greatly diminished the President's authority to impound funds.

So while this may be only one of many reasons—and it certainly is—I think it not inappropriate to point out that since that time, we have not had a balanced budget in this country. Since the President's rescission now does not go through unless Congress actually votes within 45 days to support him, few rescissions actually occur anymore.

According to the General Accounting Office, in the past 20 years since this Budget Act was passed, there have been 1,084 Presidential rescissions reflecting a total of $72.8 billion. Congress has agreed with only 399, or about 23 billion dollars' worth.

That is why we are here today to consider this legislation, to finally put some teeth into the rescission process. After 20 years in which we have managed to cut only about $1 billion a year, time for amending the 1974 act, I submit, is long overdue. We must finally provide some recourse for the Nation's Chief Executive to reduce spending that is actually sinking America $200 billion more in debt. This legislation obviously is not a cure-all or a panacea, not for everything that ails us. In reality, it is perhaps little more than a few sandbags in the dike. But it is a beginning. It is a movement by Congress in the right direction for a change. It is a step forward.

Mr. President, the current legislation is a result of many years of hard work by many people. I have already recognized Senator MCCAIN, Senator COATS, Senator DOMENICI, and others who have worked on this so hard—Senator STEVENS on our side and several from the other side of the aisle.

I think what we now have is a true bipartisan piece of legislation. It represents already much compromise and much accommodation to the legitimate concerns that have been expressed by Members on both sides of the aisle. Now I think it represents a real opportunity to finally inject some discipline into the budgetary process. It has been needed for a long time. It does some things, from my understanding and review of the history, which have not been done before, which have not been submitted at this stage of the process before. For instance, it covers any increase in any budget item. There has been criticism in times past that proposals have only covered discretionary spending. And as we all know, discretionary spending is becoming a smaller part of the overall budget—I think now down to around 16 percent. This proposal would also cover mandatory spending. As far as the future is concerned, it also reaches targeted tax benefits that have the practical effect of giving tax breaks to limited groups of taxpayers.

Now, this is an opportunity that we cannot afford to miss. Following on the heels of the agonizing and divisive defeat of the balanced budget amendment, the 104th Congress needs to recover and go on down the road, Mr. President. There is much that this Congress can accomplish if it does not dissolve into shortsightedness and partisan bickering. This is a time and a place and a legislative proposal where we can come together and put that to an end. If it is true that every journey starts with one step, then let this measure before us serve as that first step toward real budgetary reform.

I yield the floor.

Mr. COATS. Mr. President, I thank the Senator from Tennessee for his statement in support of the line-item veto. He has only been here a few months, but already he has been a powerful voice for change in this institution. It is change which I believe the taxpayers and constituents that we represent called for in the November elections. They want a change in the way we do business. They want a change in the way Congress represents them, a change in the mechanics. They are tired of hearing promises delivered from this floor over and over and over again that, yes, give us another chance; we will do better next time.

What we are seeking to do with this line-item veto proposal is change fundamentally the way we make decisions and the way that we spend taxpayers' dollars. The effort that Senator MCCAIN and I and others have been working on for so long appears to be reaching a point where we will be making a final decision as to whether or not we will bring that fundamental change to this body.

The substitute which Senator DOLE offered last evening on this floor was the result of days and weeks of some very tough negotiations involving Members who have had a history of involvement with the appropriations process, with the tax writing process, with the entitlements process, with the spending process of this Congress.

We took an idea, a concept that has been discussed, as I indicated on this floor yesterday, for nearly a century, that is enjoyed by 43 Governors, that has been called for, asked for, requested by, with one exception, every President of this entire century.

The request is simply to allow the President a check and balance against a practice that Congress has been engaging in which allows Members of the legislative branch to attach to major pieces of legislation, most of which they are pretty confident the President has little or no choice of signing, specifically targeted items, specifically designated items that go to provide a benefit for a particular class of individuals, small group of individuals, which cannot be defined in any sense in the national interest.

It may have been something that was generally accepted and overlooked in the past as we were running budgets which were roughly in balance. It was seen as a way of, I guess, making the process work here: You support this for me; I will support that for you, or I need to take this back home to let the constituents know that I am looking out specifically for them.

At a time when our annual deficits are running $200 billion or more, at a time when our national debt is reaching staggering proportions, nearly $5 trillion, we can no longer afford to practice business as usual. The vote which will eventually occur on this item is a vote for one of two courses. One course is business as usual. The other is for a change in the way business is done, for a discarding of the status quo.

For my colleagues who are in the process now of studying the final proposal that was put forth and is the result of several weeks of negotiations, let me just explain that it is not all that complicated. It is only five pages and one line of language which essentially takes the line-item veto concept—that is, the two-thirds vote that is necessary to override a decision of the President of the United States which will be granted to him, the authority of which will be granted to him to line-item out specific spending requests or items that increase spending, send them back to the Congress, and if the Congress wants to reinstate those, it will require a two-thirds vote.

That is the core concept of line-item veto—veto, the process of overriding a decision, that process which involves a two-thirds vote, and it is embodied in the Constitution of the United States. We are incorporating that into this process. We are then applying that principle of two-thirds to the various functions of spending that take place as we write legislation.

Originally, the McCain-Coats proposal only addressed appropriated

items, items that came out of the Appropriations Committee that affected discretionary spending. As Senator STEVENS has correctly pointed out, we were targeting then the line-item veto procedure to too narrow a slice of spending. We were applying it to an area under the control of the Appropriations Committee, which admittedly carried what most would describe as pork-barrel, pork-spending items, but which only went to a portion of our entire budget. Senator STEVENS suggested that that ought to be expanded, and we looked for ways to do that. Interestingly enough, we reached back into a process that has been debated at length on this Senate floor. It goes back a decade or more.

We reached back to a process which has been suggested by prominent members of the Democrat Party, led by committee chairmen who have eloquently debated the rationale behind the need for the process called separate enrollment but which also can be described as line-item veto, and we used that as the basis for putting together this new legislation that was introduced yesterday evening by the majority leader, Senator DOLE. We took that process and we applied it to a broader range of spending, so now not only will appropriations bills be subjected to line-item veto, but we will also subject other portions of the budget to line-item veto. We have included direct expenditures, expenditures of dollars, that occur outside the appropriations bills, including the appropriations bill process but also go to authorizations which provide for new spending.

We have expanded it to new entitlements. We are not changing the law in terms of benefits that are currently available under the law to new enrollees or to current enrollees within the entitlement programs, but we are saying, if there is an attempt to expand that program as it currently exists into new spending, then it will be subjected to the President's new authority, should this bill pass, new authority to line-item veto that.

Again, Congress could come back and with a two-thirds vote override the President's decision, but obviously it will be much harder for Congress to enact new spending. And we have expanded this to include what we call targeted tax benefits. There is tax pork as well as spending pork. Often what is described as the pork barrel involves not just appropriated items but tax breaks targeted for specific groups of people, specific individuals, a specific business entity within a broader group, so it is directed to help a particular targeted group, not the group as a whole.

This would not allow the President to veto a broad tax deduction on the books, or a broad tax provision such as mortgage interest deductions, such as real estate tax deduction, such as some of the deductions that Americans now enjoy under the Tax Code. But it would go to those specifically targeted items that often are added somewhere along the line in the tax-writing process and go, not to benefit a large group, but go to benefit a very specific targeted interest.

So the bill has been expanded considerably. It has a much broader scope than it had before. It applies a discipline to the process that is currently not available. It has a provision under the tax provision and has a provision available to Senators that, if they do not agree with the way in which a bill is brought forward and enrolled and think there is something that has been excluded, they can raise a point of order on this floor. Under that point of order they can subject that particular item to the separate enrollment procedures which would allow it then to be subject to the line-item veto of the President.

So, if a Senator does not believe that new entitlement spending or targeted tax benefits have been fully identified in a reported tax bill or an appropriations bill, the Dole amendment provides a means by which those Senators can challenge the bill. If the Senator's point of order is sustained, the relevant committee would then have to flush out or pull out that particular provision and enroll it separately before the bill could be in order on the floor.

So we have addressed that question that has been raised about: What if the bill slips something in but does not separately enroll it and a Senator believes it should be separately enrolled? We provided a process for that.

Finally, let me state, because the questions have been raised: We are not exactly sure how all this will work and we are a little bit nervous about the authority we are giving to the President; should we not test the idea? I suggest the idea has been tested. It has been tested for a century by our Governors in working with our legislatures. But in order to accommodate that concern, we have put a sunset in this bill so Congress can revisit this new authority, can examine it on the basis of how it applies, and if it wants can modify it or, of course, even repeal it. So it does contain a sunset. It will provide a test period to see how well it works.

Madam President, I suggest we will never know how fully effective the line-item veto power to the President will be, in terms of accomplishing real spending cuts, because it will fundamentally change the way we think and behave. That fundamental change will mean that items which would have been attached to appropriations bills or would have been incorporated in the tax bills will not be, because of the fear that they will be exposed to public scrutiny before it finally becomes law.

It is shining the light of public scrutiny on our debate, on how we write our legislation, and it is requiring a separate vote by Members in support of or in opposition to a particularly targeted item that does not benefit the national interest or the group as a whole but only goes to benefit a particular individual or a particular entity. It is that process which will, I believe, prevent most of what has taken place in the past that we find so egregious. So we will never be able to total up the amount of money that we have saved for our constituents and for the taxpayer because the line-item veto will have accomplished its purpose—its purpose being to prevent this kind of activity from taking place in the first place; to prevent the kind of embarrassment that we go through on an annual basis when we discover the items that have been slipped into the appropriations bills, slipped into legislation, slipped into tax bills at the last minute in conference, behind closed doors, late at night, and then presented in a massive bill with a limited time period for debate in the House of Representatives and an urgency because of the end of the session or whatever might occur—the urgency to get the legislation on the President's desk and signed.

The President then looks at this massive bill and says: Ninety or ninety-five percent of what is in here is what is beneficial to this country, what I want to support. But you are forcing me—as President Truman said, ''blackmailing me''—into either accepting the whole bill with the egregious provisions or rejecting the whole bill. And the emergency we are under, the timeframe we are under, requires that I have little choice except to not reject the whole bill.

That is what we are offering here today. I trust my colleagues will look at it carefully. I hope we can gain their support. It has the support of the sponsors of the bill and the vast majority of Republicans. It has support, I believe, of Democrats who have been prominent in helping us advance this concept. And we look forward to advancing it, hopefully, this week, and putting it on the President's desk soon—something we should have done a long, long time ago.

Madam President, with that I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. BRADLEY. Madam President, I offer my congratulations to the distinguished Senator from Indiana on the bill that has come before the Senate, the new line-item veto bill. Many of the provisions in the line-item veto bill that is before the Senate are provisions that were embodied in the original bill that I introduced and the distinguished Senator from Indiana cosponsored. The Dole bill does include a sunset provision, as I understand it. After 5 years we will be able to see whether this bill actually does tip the balance between the executive and the legislative branches of Government. It, as I understand it, also includes separate enrollment, which is the way the bill deals with the constitutional question in addition to the sunset.

The bill, as I understand it, also includes tax expenditures and does so in a way that is broader than the original

House bill. As I understand it, it essentially says that the President can veto tax expenditures that have the practical effect of benefiting a particular taxpayer or limited class of taxpayers when compared with other similarly situated taxpayers. While there is some ambiguity, I take this provision to have a broad interpretation.

I might offer an amendment during the course of the debate to clarify that this provision should be interpreted broadly, or I might through the course of the debate, in hearing what other Senators say about it and my own interpretation of the amendment, decide not to offer such an amendment. But I do think that it is a step far in the right direction. This is really an opportunity to bring tax expenditures into the line-item veto in a significant way, and allow the President of the United States not only to veto those pork projects that are in the appropriations process but also to look at every tax bill that often is dotted with special interest provisions or attempts to expand special interest provisions that are already in the Code and strike those lines with a line-item veto.

So, Madam President, when we have the cloture vote on Wednesday, I intend to vote for cloture. And I hope that we will be able to dispense with this bill by the end of this week and move on to other matters. I think this is an important measure.

I look forward to working with the distinguished Senator from Indiana who has been a good colleague throughout this process. I compliment him on the bill that has come before the Senate.

Mr. COATS addressed the Chair.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. COATS. Madam President, I want to thank the Senator from New Jersey for his remarks and commend him for his longstanding efforts on behalf of the line-item veto concept.

The Senator from New Jersey has talked to me on numerous occasions about expanding the original concept of the bill that Senator MCCAIN and I have proposed to include—not just appropriated items but also tax expenditures. He, as a member of the Finance Committee, detailed for me the process of what most would consider tax pork that occurs as tax bills are written. It is not just the appropriations process.

I am pleased that we could address this issue in this bill as an amendment introduced last evening by the majority leader. I say to the Senator from New Jersey our goal, I believe, is the same—to address the same items that he attempts to address. I hope that as we debate through this and work through this we can clarify that so that Members know exactly what we are after. It is hard to get the exact words in place so that we understand just exactly how this applies to tax items. But I believe that the targeted tax expenditures which are targeted in the Dole amendment very closely parallel what the Senator from New Jersey has tried for so long to accomplish.

So we look forward to working with him. I thank him for his support.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call roll.

Mr. EXON. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 p.m. having arrived, the Senate will now stand in recess until the hour of 2:15 p.m.

Thereupon, at 12:32 p.m., the Senate recessed until 2:16 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. ABRAHAM].

LEGISLATIVE LINE-ITEM VETO ACT

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER (Mr. ABRAHAM). The pending question is amendment No. 347 offered by the majority leader to the bill S. 4.

LEAVE OF ABSENCE

Mr. STEVENS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, I have to attend a meeting in Delta Junction, AK, pertaining to Fort Greeley on Friday, March 24. I ask unanimous consent that I be excused from attendance in the Senate from 3:45 on Thursday, March 23, until the Senate convenes on March 27.

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

The Senator from Idaho.

Mr. CRAIG. Mr. President, this afternoon I rise in support of S. 4, the Legislative Line-Item Veto Act.

What is now ongoing is, in my opinion, the long overdue and what I hope is a historic debate toward resolution of this very important issue.

Let me recognize both Senator COATS and Senator MCCAIN, as well as Chairman PETE DOMENICI and Majority Leader DOLE, for their willingness to work together to bring us to a point of compromise that I think has produced a line-item veto product in S. 4 that can pass the Senate, work through the conference with the House, and ultimately be placed on the President's desk with the degree of confidence I think we now have that he will sign it.

This is one of those items that an overwhelming majority of the citizens of our country say they agree with. It is certainly something that most Senators have agreed with in principle, and now that we have been able to refine it, we have a product that I think the majority can support.

The issues, of course, were the two-thirds override: What kind of authority would the President have in the ability to veto and in our ability to react to that veto? I think it has to be a tough vote, a supermajority vote. The idea of a simple majority, while I supported a concept like that a year ago, now clearly, if we can get the tougher version, we ought to do so.

The idea of separate enrollment or rescission is an issue that has been discussed. To extend the line-item veto authority in new, direct entitlement spending as well as appropriations is another issue that we had to work our way through. And, of course, to extend the targeted tax benefits, again, is another one of those issues that I am extremely pleased to see that we have been able to deal with.

Let me first talk about the majority versus the two-thirds override which is really at the heart of all of this. It is the heart of the division of authority and responsibility and the power associated with that authority. As I have mentioned, I have supported both approaches in the past, but I have always argued in doing so it was extremely important that the Congress of the United States pass the strongest possible line-item veto. In fact, as Senator MCCAIN read earlier yesterday, that is exactly what the President has now said publicly he wants—the the strongest possible product that the Senate of the United States or the Congress collectively can yield.

Last year's House passed a majority override. This year, an overwhelmingly bipartisan House, by a majority of 294 to 134, passed the two-thirds override, an important signal from that new Republican House.

Now that Senators know we are firing with what all of us know are real bullet votes, it is an opportunity to get our two-thirds. That is the product at hand now. That is why I am extremely pleased that we can deal with it.

The second issue I mentioned, the idea of separate enrollment versus rescission—as I say, I have sponsored both and cosponsored both because, whether I was in the majority or whether I was in the minority, I have always argued that we had to get to the President's desk and into his power some form of line-item veto. The stronger versions were always greatly appreciated by this Senator, but at the same time I felt it was critically important that we move the issue. Now my preferences lie clearly with a strengthened rescission approach. It is simpler. In enrollment, transmission to the President, and at signing of a law, it could be used as a scalpel instead of the idea of a butcher knife, because rescissions can reduce as well as zero out an item. I think that is the way we want to handle this.

But I will vote for a separate enrollment—or I would have, if that had been