and dedication that his parents had to their family and their community. And he spoke of the love and devotion that his father—a Polish immigrant—had for his new Nation.

He spoke of how much his roots in the small town of Rumford, ME, meant to him. It was those deep roots, along with his strong sense of family, that gave Ed Muskie the foundation upon which he would stand as he became a leading figure in American political life. And he cherished his father's roots, and from the standpoint that he viewed it as America giving every opportunity to anybody who sought to achieve.

I was struck with a very real sense of history listening to his reminiscences during that visit. I do not think it is possible for any Maine politician, regardless of party affiliation, to have come of age during the Muskie era and not have been influenced in some way by his presence. He was that preeminent in the political life of my State.

Ed Muskie was a towering figure in every sense of the word. In his physical stature, in his intellect, in his presence on Capitol Hill, in the extent of his impact on the political life of Maine, and in the integrity he brought to bear in everything he did.

And Ed was thoroughly and proudly a Mainer, with the quiet sense of humor associated with our State. Each year, the distinguished senior Senator entertained guests at the Maine State Society lobster dinner at the National Press Club by rubbing the belly of a live lobster, causing it to fall asleep, something only a real Mainer would know how to do.

Personally, I will always remember and be grateful for the warmth, friendship, and encouragement that Ed Muskie gave me over the years. When I entered the U.S. House of Representatives in 1979, I was the newest member of the Maine congressional delegation. Ed was the dean of the delegation. We were congressional colleagues for only a year and a half, but our friendship lasted throughout the years. And when I was elected to the seat which he had held with such distinction, I was touched by his kindness, and grateful for his advice and counsel.

Throughout his life, he never failed to answer the call of duty. He answered the call from the people of Maine * * * He answered the call from America's rivers and streams * * * And he answered a call from the President of the United States and a worried Nation when Senator Muskie became Secretary of State Muskie in a moment of national crisis.

Mr. President, 75 years before Edmund Muskie was born, another famous Mainer, Henry Wadsworth Longfellow, captured what I believe is the essence of the wonderful man we remember today. Longfellow wrote:

Lives of great men all remind us
we can make our lives sublime,
And, departing, leave behind us
footprints on the sands of time.

Ed Muskie's footprints remain on those sands. They are there as a guide for those of us who would follow in his path. They are big footprints, not easily filled. But we would all do well to try.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I think we are still waiting for the distinguished senior Senator from West Virginia, Senator BYRD. And while we wait, I would like to ask consent that I be permitted to speak for 5 minutes as if in morning business.

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

FORMER SENATOR ED MUSKIE

Mr. DOMENICI. Mr. President, I cannot speak about Senator Ed Muskie with the depth of knowledge that Senator SNOWE had of his background and his impact on his beloved State of Maine. But it has fallen to me to be, at every stage of my growth in the Senate, on a committee with Senator Muskie.

My first assignment was the Public Works Committee. I was the most junior Republican, and Senator Muskie was the third-ranking Democrat and chaired the Subcommittee on the Environment. I also served on that subcommittee. I saw in him a man of tremendous capability and dedication when he undertook a cause. He learned everything there was to learn about it, and he proceeded with that cause with the kind of diligence and certainty that is not so often found around here. There were various times during the evolution of clean water and clean air statutes in the country that we could go in one of two directions, or one of three. Senator Muskie weighed those heavily, and chose the direction and the course that we are on now.

No one can deny that Senator Muskie is the chief architect of environmental cleanup of our air and water in the United States. Some would argue about its regulatory processes, but there can be no question that hundreds of rivers across America are clean today because of Ed Muskie. There can be no doubt that our air is cleaner and safer and healthier because of his leadership. I really do not think any person needs much more than that to be part of their legacy.

But essentially he took on another job, and a very, very difficult one—to chair the Budget Committee of the U.S. Senate. Again, it fell on me as a very young Senator to be on that committee. I have been on it ever since. I was fortunate to move up. He became chairman in its earliest days.

I might just say as an aside that the Chair would be interested in this. When we moved the President's budget—$6 billion in those days—that was a big, big thing, and we had a real battle for it. He would take the Presidents—no matter which ones—on with great, great determination.

But I want to close by saying that one of the things I will never forget about him is that he saw me as a young Senator from New Mexico. I had a very large family. He got to meet them and know them. On a number of occasions he personally said that he would very much like to make sure that we did not do things around here to discourage young Senators like DOMENICI from staying here. I think he was sincere, even though I was on the Republican side. I think he saw us with an awful lot of feeling ourselves up here in trying to establish rules that were very difficult, and he used to regularly say, ''I hope this does not discourage you. We need to keep some of you around.''

So to his wonderful family and to all of those close to him, you have suffered a great loss, but I can say that his life has been a great legacy for the country. That ought to lend you in these days of sorrow a bit of consolation, because that legacy is great. Death is obviously inevitable. He accomplished great things before that day occurred.

With that, I yield the floor.

LEGISLATIVE LINE-ITEM VETO ACT OF 1995—CONFERENCE REPORT

The Senate continued with the consideration of the conference report.

Mr. DOMENICI. Parliamentary inquiry, Mr. President. What is the pending business?

The PRESIDING OFFICER. The conference report on the line-item veto.

Mr. DOMENICI. Mr. President, for the information of the Senate, we have just discussed the matter of a unanimous-consent agreement with Senator BYRD, and he indicated he is not prepared to enter into that time agreement just now and would like to use some time and get a better feel for himself as to where we are. I have no doubts we will enter into a similar agreement to the one our majority leader indicated, but it will not be forthcoming at this point. I think that is fair statement.

Mr. President, I note in the Chamber the presence of Senator MCCAIN. It is our prerogative as proponents of the conference to lead off, and I wonder if he would like to make a few opening remarks, and then I would make a few, and then perhaps we would yield the floor to Senator BYRD for his opening remarks.

Since there is no time agreement at this point, I yield the floor.

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I thank the Senator from New Mexico for everything he has done on this issue. The Senator from New Mexico has been around here for a long time and is fully appreciative of the magnitude of what we are about to do. He also has been one who continuously has sought to

improve and to make more efficient, and indeed constitutional, this effort, and I am grateful for his continued support.

I also appreciate the very tough and very cogent arguments that he made while we were arriving at this compromise which I think will prevail today. I never underestimate the persuasive powers of the Senator from West Virginia [Mr. BYRD]. I know he will come forward with a very strong and compelling and constitutionally and historically based argument against what we are trying to do today. I will listen as always with attention and respect.

Mr. President, 1 year ago, the Senate began consideration of S. 4, legislation to give the President line-item veto authority. Ten years before that, I began my fight in the Senate to give the President this authority, and 120 years before that Representative Charles Faulkner of West Virginia introduced the first line-item veto bill. Hopefully, a 120-year battle may soon be won. I would like to outline the line-item veto measure agreed to by the conferees. It is a good agreement and a good line-item veto bill.

The conference report amends title X of the Congressional Budget Impoundment Control Act of 1974 to add a new part C comprising sections 1021 through 1027. In general, part C will grant the President the authority to cancel and hold any dollar amount specified in law for the following purposes: First, to provide discretionary budget authority; or second, to provide new direct spending; or third, to provide limited tax benefits contained in any law. Congress has the authority to delegate to the President the ability to cancel specific budgetary obligations in any particular law in order to reduce the Federal budget deficit.

While the conference report delegates these narrow cancellation powers to the President, these powers are narrowly defined and provided within well-defined specific limits.

Under this new authority, the President may only exercise these new cancellation powers if the Chief Executive determines that such cancellation will reduce the Federal budget deficit and will not impair any essential Government function or harm the national interest. In addition, the President must make any cancellations within 5 days of the enactment of the law which contains the items to be canceled and must notify the Congress by transmittal of a special message within that time.

The conference report specifically requires that a bill or joint resolution be signed into law prior to any cancellations from that act. This requirement ensures compliance with the constitutional stipulations that the President enact the underlying legislation presented by Congress after which specific cancellations are then permitted.

We intend that the President be able to use his cancellation authority to surgically eliminate Federal budget obligations. The cancellation authority does not permit the President to rewrite the underlying law, nor to change any provision of that law.

The terms ''dollar amount of discretionary budget authority,'' ''item of new direct spending,'' and ''limited tax benefit'' have been carefully defined in order to make clear that the President may only cancel the entire dollar amount, the specific legal obligation to pay, or the specific tax benefit.

''Fencing language'' may not be canceled by the President under this authority. This means that the President cannot use this authority to modify or alter any aspect of the underlying law, including any restriction, limitation or condition on the expenditure of budget authority, or any other requirement of the law.

I wish to emphasize this point again. All fencing language is fully protected under this bill.

The lockbox provision of the conference report has also been included to maintain a system of checks and balances in the President's use of the cancellation authority. Any credit for money canceled will be dedicated to deficit reduction. The lockbox requirement ensures that the President does not simply cancel a particular dollar amount of discretionary budget authority, item of new direct spending, or limited tax benefit in order to increase spending in other areas.

The President's special cancellation message must be transmitted to the House of Representatives and to the Senate within 5 calendar days—excluding Sundays—after the President signs the underlying bill into law.

Such special cancellation messages must be printed in the first issue of the Federal Register published after the transmittal.

Upon receipt of the President's special message in both Houses of Congress, each dollar amount of discretionary budget authority, item of new direct spending, or limited tax benefit included in the special message is immediately canceled. The cancellation of a dollar amount of discretionary budget authority automatically rescinds the funds. With respect to an item of new direct spending or limited tax benefit, the cancellation renders the provision void, such that the obligation of the United States has no legal force or effect.

Any such cancellation is reversed only if a bill disapproving the President's action is enacted.

The conference report provides Congress with 30 calendar days of session to consider a disapproval bill under expedited procedures. A ''calendar day of session'' is defined as only those days during which both Houses of Congress are in session.

I wish to note that the expedited procedures provide strict time limitations at all stages of floor consideration of a disapproval bill. The conference report sets out procedures designed to prevent delaying tactics including but clearly not limited to filibuster, extraneous amendments, repeated quorum calls, motions to recommit, or motions to instruct conferees.

When the President's message is received, any Member may introduce a disapproval bill. The form of the disapproval bill is laid out in the conference agreement. For a disapproval bill to qualify for expedited procedures, it must be introduced no later than the fifth calendar day of session following receipt of the President's special message. Any bill introduced after the fifth day of session is subject to the regular rules of the two Houses.

A disapproval bill introduced in the House of Representatives must disapprove all of the cancellations in the special message. There are no similar requirements in the Senate, except no disapproval bill may contain any legislative language not germane and directly related to the President's cancellation message.

After introduction, a disapproval bill will be referred to the appropriate committee or committees. Any committee or committees of the House of Representatives to which such a disapproval bill has been referred shall report it without amendment, and either with or without recommendation, not later than the seventh calendar day of session after the date of its introduction.

Again, in the Senate, the committee may amend the bill, but it may not offer any amendments beyond the scope of the President's message.

If any committee fails to report the disapproval bill within the requisite time period, then the bill will be discharged from committee.

Procedure for consideration of the disapproval bill in the House of Representatives is noted in the conference report.

In the Senate, a motion to proceed to the consideration of a disapproval bill is not debatable. Section 1025(e)(6), of the bill, provides a 10-hour overall limitation for the floor consideration of a disapproval bill. Except as specifically provided in the bill, this limit on consideration is intended to cover all floor action with regard to a disapproval bill. This section is specifically meant to preclude the offering of amendments or the making of dilatory motions after the expiration of the 10 hours.

Amendments to a disapproval bill in the Senate, whether offered in committee or from the floor, are strictly limited to those amendments which either strike or add a cancellation that is included in the President's special message. No other matter may be included in such bills. To enforce this restriction in the Senate, a point of order, which may be waived by a three-fifths vote, would lie against any amendment that does anything other than strike or add a cancellation within the scope of the special message. To the extent that extraneous items are added to disapproval bills, and the Senate has not

waived the point of order against such an item, the conference report intends that such legislation would no longer qualify for the expedited procedures.

In addition, should differing House and Senate disapproval bills be passed and the measure go to conference, the conferees must include any items upon which the two Houses have agreed and may include any or all cancellations upon which the two Houses have disagreed, but may not include any cancellations not committed to the conference.

Once a disapproval bill is passed by the Congress, it is assumed the President would veto the new bill. The President would have to use his constitutional veto authority to do so and could not cancel any part of a cancellation disapproval bill. The Congress would then have to muster a two-thirds vote to override the veto and force the President to spend the money.

Mr. President, there was considerable debate between the two Houses about exactly what the President may veto. In the original version of both S. 4 and H.R. 2, the President was given enhanced rescission authority. This would have allowed the President to veto any dollar amount he saw fit to cut. Some felt this authority would give the President too much power and might result in too much power shifting to the Executive. The compromise developed by the conferees returns to the idea of a line-item veto—in other words, the President can cancel any line.

Let me get a chart here, and demonstrate it very quickly. This is a chart that is very familiar to the conferees, I might add, since we used this during our debate and discussions.

The bill also allows the President to line-item veto—or cancel—new direct spending provisions in law. When the President vetoes these provisions, he is effectively canceling the obligation to pay the new benefits.

The bill also allows the President to line-item veto any targeted, or limited, tax benefits if those benefits effect 100 or fewer individuals.

Mr. President, this is not the approach I would have preferred. I believe that the Senate language developed with Mr. BRADLEY would have been more effective. However, as we all know, compromise often must occur in conference. The results can be seen here.

As I said, I would have preferred to see this issue addressed in a different manner, but the compromise still has teeth and will result in fewer special interest tax breaks and less corporate welfare.

Finally, the bill will become effective on January 1, 1997 or as soon as a balanced budget is signed into law, which ever is first. I want to note that President Clinton has agreed to this effective date. The line-item veto would sunset in 8 years. I would hope that after 8 years of use, the public would realize the value of the line-item veto and we would make this authority permanent. However, the sunset is included in the bill to address the concerns of some Members.

This is the actual language from the report, which calls for $49,846,000 for special grants for agricultural research.

The report language then goes on to state specific parts of the special grants for agricultural research, for example: Wood utilization research in Oregon, Mississippi, North Carolina, Minnesota, et cetera; wool research in Texas, Montana, and Wyoming.

What the President could do is say that he does not approval of wood utilization research in these six States. He could line item out, out of the report language, this $3,758,000, thereby subtracting that $3,758,000 from the $49 million which is in the bill for special grants for agricultural research. That is fundamentally what this line-item veto does. So that what is in the report language affects the original bill.

I was disappointed that the conference was not able to keep the Feingold-McCain emergency spending amendment. However, I have been assured by the staff of the Budget Committee that they would be willing to meet with our respective staffs and develop language to address the Senator from Wisconsin's and my concerns regarding this matter.

Mr. President, the power to line item veto is not new. Every President from Jefferson to Nixon used a similar power. The line-item veto power they exercised ensured that the checks and balances between the congressional and executive branch remained in balance. In 1974, in reaction to the Presidential abuses, the Congress stripped the President of this power. Unfortunately, since that time, the Congress has abused its ability to dictate how money be spent. This bill would restore the checks and balances envisioned by the Founding Fathers.

Further, unlike impoundment power where the President could use appropriated money to fund his priorities over the objections of the Congress, this bill contains a lockbox provision as I have described. Any money line item vetod under this bill could be used only for deficit reduction.

Mr. President, many have characterized this legislation as a dangerous ploy, not as a true budgetary reform. This is not accurate and does not take into account the greater picture of the dangers presented by our out-of-control budget process. The real danger is what has happened to the administration of the American Government. Unnecessary and wasteful spending is threatening our national security and consuming resources that could better be spent on tax cuts, deficit reduction, or health care. I do not make the charge that wasteful spending threatens our national security without a great deal of consideration. After last year's defense appropriations bill, it is unfortunately clear how dangerous this kind of spending can be to our national security. It should now be clear how urgent the need for a line-item veto is.

At a time when thousands of men and women who volunteered to serve their country have to leave military service because of changing priorities and declining defense budgets, we nonetheless are able to find money for billions of dollars of unnecessary spending in the defense appropriation bill. At a time when we need to restructure our forces and manpower to meet our post-cold war military needs, we have squandered billions on pointless projects with no military value.

Mr. President, every Congressman or Senator wants to get projects for his or her district. Everyone wants not only their fair share of the Federal pie for their States, they want more. Therein lies the problem. It is an institutional problem. I am not a saint. But we are trying to make a difference. I am not here to cast aspersions on other Senators who secured an unnecessary project for their States. I am not here to start a partisan fight.

Congress created the problem and its Congress' responsibility to fix it. It is a Congress that has piled up a $5 trillion debt. It is a Congress that is responsible for over a $200 billion deficit this year. It is a Congress that has miserably failed the American people. It is an institution that desperately needs reform.

Anyone who feels that the system does not need reform need only examine the trend in the level of our public debt. As I stated in my analysis of the most recent budget plans, the deficit has continued to balloon and spending continues to increase. In 1960, the Federal debt held by the public was $236.8 billion. In 1970, it was $283.2 billion. In 1980, it was $709.3 billion. In 1990, it was $3.2 trillion, and it is expected to surpass $5 trillion this year.

My colleagues may ask: Why is the line-item veto so important?

Because a President with a line-item veto could help stop this waste. Because a President with a line-item veto could play an active role in ensuring that valuable taxpayer dollars are spent effectively to meet our national security needs, our infrastructure needs, and other social needs without pointless pork barrel spending. And the President can no longer say, ''I didn't like having to spend billions on a wasteful project but it was part of a larger bill I just couldn't say no to.'' Under a line-item veto, no one can hide

According to a recent General Accounting Office study, $70 billion could have been saved between 1984 and 1989, if the President had a line-item veto.

It is important because it can help reduce the deficit. It can change the way Washington operates. Mr. President, we cannot turn a blind eye to unnecessary spending when we cannot meet the needs of our service men and women. We cannot tolerate waste when Americans all over this country are experiencing economic hardship and uncertainly.

The American public deserves better than business as usual. As their elected representatives we are duty bound to end the practice of wasteful and unnecessary spending.

The line-tem veto is not a means to encourage Presidential abuse, but a means to end congressional abuse. It will give the President appropriate power to help control spending and reduce the deficit. To anyone who thinks that Congress is fully capable of policing national fiscal affairs, I simply bring to the Senate's attention the $3.7 trillion public debt as irrefutable proof of our inability.

Mr. President, a determined President will not be able to balance the budget with the line-item veto. But a determined President could make substantial progress toward that goal.

I submit that had the President been able to exercise line-item veto authority over the past 10 years the fiscal condition of our Nation would not be nearly as severe as it is today.

With that in mind, I hope the Senate would consider the following quote by a prescient figure in the Scottish Enlightenment, Alexander Tytler. He stated:

> A democracy cannot exist as a permanent form of government. It can exist only until a majority of voters discover that they can vote themselves, largesse out of the public treasury. From that moment on, the majority always votes for the candidate who promises them the most benefit from the public treasury, with the result being that democracy always collapses over a loose fiscal policy.

If our debt surpasses our output, I fear that our democracy may one day collapse over loose fiscal policy.

Today is a historic day. A 120-year battle is coming to a close. The line-item may soon be a reality.

Mr. President, I want to, again, extend my respect and consideration and appreciation for the Senator from West Virginia, with whom I have debated this issue over the last 10 years. I would like to allege I have always prevailed over the Senator from West Virginia both in logic and in humor. I am afraid neither is the case, but I have found him to be a most distinguished opponent, most learned and most dedicated to the proposition to which he is committed.

Mr. President, I yield floor.

Mr. BYRD. Will the Senator yield?

Mr. President, I thank the distinguished Senator for his customarily gracious and courteous remarks concerning me. I wish to respond in kind by saying that, although I adamantly oppose the measure which the distinguished Senator from Arizona and the distinguished Senator from Indiana support, and for which they have fought so long, I have only the utmost respect for both of them. I think that the Senator from Indiana works hard and is dedicated. I serve with him on the Armed Services Committee. I admire him. I consider him to be my friend, and I am sure, regardless of the outcome in this instance, I will remain his friend.

The distinguished Senator from Arizona is a great patriot. He has served his country overseas, and he has served his country in this Chamber. He fights hard and very tenaciously for that in which he believes in the legislative field. He has done so in this instance. I regard him as one of the more skilled and devoted Members of the Senate. I have only the utmost respect for him.

I like to believe before the day is over, I will have prevailed over his position, but that is somewhat doubtful insofar as I am concerned at the moment. But I do respect him, and regardless of how vehemently I may propose my viewpoint, it has nothing to do with my respect for him and my friendship for him.

He also serves on the Armed Services Committee and is one of the outstanding members of that committee.

So with those words of respect, I now yield the floor. It is my understanding Senator DOMENICI plans to speak at this time.

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

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

The Senator from New Mexico is recognized.

Mr. DOMENICI. Mr. President, I want to first acknowledge the hard work and dedication that Senator TED STEVENS from Alaska has put into this conference report. Obviously, there is no Senator here who is more dedicated to our prerogatives as a Senate and our prerogatives as individual Senators, and there is no Senator more concerned about maintaining that power. And, likewise, there is none who understands the effectiveness of the appropriations process any better than Senator TED STEVENS from Alaska, I might say, perhaps with the exception of the distinguished Senator from West Virginia.

Senator STEVENS worked tirelessly to come up with a compromise. He will speak for himself later in the day, but obviously, if there is a hero, he is one of them on this effort.

I have already indicated the two leaders on our side have spent a long period of their Senate life devoted to this, and they took the lead from the beginning. Senator MCCAIN is one, who has just spoken, and I am sure that we will have a number of Senators speak before we are finished. But Senator COATS of Indiana will also be here. Obviously, he is a coleader of this cause. I acknowledge their dedicated effort.

I do not intend to speak very long at this point. We have completed a conference report after months in conference, and I rise in support of the Line-Item Veto Act which is before us.

I cannot emphasize enough the importance of this legislation. I believe it has the potential to fundamentally change the way we make spending decisions in Congress and our relationship to the executive branch. I think the objectives of this legislation are correct. We should enact legislation that facilitates our ability to extract lower priority spending from legislation and to devote that to deficit reduction.

However, I share the concerns of others about this bill's impact on the balance of power between the legislative and executive branch.

I also want to congratulate again the majority leader who brought together a group of Senators with very diverse views and got them to compromise on this final bill. The distinguished chairman of the Governmental Affairs Committee, Senator STEVENS, once again deserves a great deal of credit, for he chaired that effort, that conference and that effort that our leader put together in an effort to resolve differences.

Senators MCCAIN and COATS, as I indicated heretofore, deserve the lion's share of credit for getting this bill where it is. And they have been tenacious advocates, and obviously we will hear from both of them here today.

Mr. President, I made line-item veto legislation a priority for the Budget Committee, because clearly we did not want to be making a point of order under the Budget Act on line-item veto because it came within the purview of legislation that must be considered by the Budget Committee. For a number of years getting this job done has been stopped either by filibuster or point of order. I thought it was time that we get that point of order out of the way and that we do our job and let us work our will.

We moved quickly to hold hearings and report Senate bill No. 4 at the beginning of 1995. If this bill had not been reported, it would have been subject to the point of order, as indicated, and we would probably never be here.

Mr. President, the conference report on this bill essentially adopts the House's enhanced rescission approach. I repeat, this essentially adopts the House's enhanced rescission approach. Essentially that approach was similar to the approach advocated by Senators MCCAIN and COATS and many who followed their lead.

There are a significant number of modifications to the House's enhanced rescission concept and particulars.

One, we sunset this authority after 8 years to give Congress an opportunity to review the President's use of this authority. Some wonder why, but, essentially, if you did not have that, there would be no time when you could change this law over a President's objection without having two-thirds vote here in the Senate, because, indeed, if a President liked it and we did not like it—and there was a real reason for that, to argue that policy issue out—Presidents would veto whatever we sent them.

As a matter of course, we would be saying, regardless of how it is used—and

it is a kind of new activity. Even the occupant of the chair, who used it as a Governor, understands and has spoken to me that this is somewhat different in scope when you do it this way, when it is the national picture, and we are treading on some new ground.

So I would have liked a shorter sunset provision, but the House had none. So there are 8 years. We will live through two complete Presidential terms, starting next January, and see how it is working out with reference to a judicious exercise of that new power given to Presidents.

No. 2, the line-item veto applies to all new spending, including new direct spending, that is frequently called entitlements or mandatories. Despite all the rhetoric, the only real deficit reduction this year has been in the area of discretionary spending. I have misstated the number heretofore, and let me be accurate. The only money saved in the balanced budget argument to this point is $12 billion less in spending in the appropriated accounts, domestic, in the year 1995. It is obvious to those who know the budget, we cannot balance the budget or significantly restrain Federal spending by just having a veto over discretionary accounts, nor can we continue the idea and concept that we can balance the budget on the back of the domestic discretionary programs, that spending alone.

We devote any savings from the line-item veto to deficit reduction through a lockbox concept. We clearly define and place restrictions on the President's cancellation authority. The President does not have complete discretion to cancel items in laws. He can only cancel entire items in laws or accompanying reports.

Moreover, the bill makes clear he can cancel only budgetary obligations. He cannot use his authority under any circumstance to change the provisions of law, that is, to write law in an appropriations bill.

We strengthen the expedited procedures for congressional consideration of a bill to disapprove of a President's cancellation of an appropriation, either the line item or direct spending or the limited tax benefit, which has been described by my friend from Arizona. I will not go into it any further now other than to say this bill, as it left the Senate, carried with it an expanded concept of what ought to be subject to cancellation.

The two things included here that were not historically considered were targeted taxes, that is, very special and direct taxes that benefit a small group of people or institutions, and new additional mandatory or direct expenditures, not vetoing entitlements, but if you create a new one that spends more money, the President has one opportunity to address that.

Frankly, I think both are fair because if the statement, that is clear, that appropriated accounts alone do not create the problem of deficit spending, nor are they the only area where special attention is made to special needs of special constituents by legislators, the same is done in tax bills and the same is done in entitlements.

Clearly, the President, if he is going to have a chance to get at and cancel budget authority, obligational authority for appropriated accounts, both domestic and defense, he ought to have a similar authority. This last part that I have just described is truly an experiment, but we worked as diligently as we could to make it clear and to make sure that everyone would understand what the conferees had in mind on direct or mandatory expenditures and targeted tax expenditures.

Again, I congratulate Senators DOLE, MCCAIN, and my cohort who chaired this conference, the distinguished Senator from Alaska, Senator TED STEVENS. This is a remarkable achievement on their part. While it will be contested here today, I do not believe it will be contested that this is some very far-reaching legislation, that those who think change is good will clearly understand that this is a formidable event in the ever-changing landscape of the legislation that Congress considers and finally passes.

There will be a number of Senators who oppose this. Clearly, I want to say right up front that the distinguished Senator from West Virginia, former chairman of the Appropriations Committee, majority leader, minority leader of this U.S. Senate, will oppose this. He will be listened to. The concerns he expresses will not be light concerns. They will be important concerns.

Many of us have agreed with him in the past, and we have concerns about the legislation. However, we have come to the conclusion—many on the Appropriations Committee, or a number, will support this legislation—that the time is now to give line-item veto a chance, to get it over to the President who will sign it. First get it to the House, they will adopt it, and then go to work on making it work come January.

Now, we have not yet agreed upon the time that will be taken here because, quite appropriately, the distinguished Senator from West Virginia wants to watch his time carefully, not only for himself but some of his advocates.

When we started here on the floor, before a word was said, the distinguished Senator from West Virginia, in his usual style and gracious, gracious demeanor and respect for the institution, shook the hand of Senator MCCAIN and Senator DOMENICI and indicated his respect, but indicated in this particular measure he did not agree. That is a great part of our Senate heritage. He disagrees. He will have his day. We disagree with Senator BYRD. We will have our day. I hope in the end we will have a majority of Senators supporting what we propose. I yield the floor.

(Mr. KYL assumed the chair.)

Mr. BYRD. Mr. President, ''I am no orator, as Brutus is. But as you know me all: a plain blunt man * * * for I have neither wit, nor words, nor worth, action, nor utterance, nor the power of speech to stir men's blood. I just speak right on. I tell you that which you yourselves do know. * * *''

Mr. President, the Senate is on the verge of making a colossal mistake. The distinguished Senator from New Mexico was correct when he spoke of this measure as being a formidable measure, a far-reaching measure, a measure that will produce a sea change in the relationship between the executive and the legislative branch.

Let me say at the outset that I have only the utmost respect for the distinguished, the very distinguished Senator from New Mexico. He is one of the brightest Senators that I have seen during my 38 years in this body. He understands the budget process, in all likelihood, better than anyone else in this Chamber on either side of the aisle. He is skillful, he is dedicated, he is tenacious, and, of course, he is fighting for what he believes today. I cannot help but think, however, that in his heart of hearts, he would rather be supporting a more moderate measure than this that is before him. But I have no right to attempt to look into his mind or into his heart.

The Senate, you mark my words, is on the verge of making a colossal mistake, a mistake which we will come to regret but with which we will have to live until January 1 of the year 2005, at the very least. We are about to adopt a conference report which will upset the constitutional system of checks and balances and separation of powers, a system that was handed down to us by the Constitutional Framers 208 years ago, a system which has served the country well during these two centuries, a system that our children and grandchildren are entitled to have passed on to them as it was handed down to us.

And as I comprehend the appalling consequences—they may not become evident immediately, but in due time they will be seen for what they are—as I comprehend the appalling consequences of the decision that will, unfortunately, likely have been rendered ere we hear ''the trailing garments of the Night sweep through these marble halls,'' I think of what Thomas Babington Macaulay, noted English author and statesman, wrote in a letter to Henry S. Randall, an American friend, on May 23, 1857:

> Either some Caesar or Napoleon will seize the reins of government with a strong hand; or your republic will be as fearfully plundered and laid waste by barbarians in the Twentieth century as the Roman Empire was in the Fifth—with this difference . . . that your Huns and Vandals will have been engendered within your own country by your own institutions.

The Senate is about to adopt a conference report, Mr. President, which Madison and the other Constitutional Framers and early leaders would have absolutely abhorred, and in adopting the report we will be bartering away

our children's birthright for a mess of political pottage.

The control of the purse is the foundation of our constitutional system of checks and balances of powers among the three departments of government. The Framers were very careful to place that control over the purse in the hands of the legislative branch. There were reasons therefor.

The control over the purse is the ultimate power to be exercised by the legislative branch to check the executive. The Romans knew this, and for hundreds of years, the Roman Senate had complete control over the public purse. Once it gave up its control of the purse strings, it gave up its power to check the executive. We saw that when it willingly and knowingly ceded its powers to Julius Caesar in the year 44 B.C. Caesar did not seize power, the Senate handed power over to Caesar and he became a dictator. History tells us this, and history will not be denied.

The same thing happened when Octavianus, later given the title of Augustus in the Roman Senate, when in 27 B.C. the Senate capitulated and yielded its powers to Augustus, willingly desiring to shift from its own shoulders responsibilities of government. When it gave to him the complete control of the purse, it gave away its power to check the executive.

Anyone who is familiar with the history of the English nation knows that our British forebears struggled for centuries to wrest the control of the purse from tyrannical monarchs and place it in the hands of the elected representatives of the people in Parliament. Perhaps it would be useful for us to review briefly the history of the British Parliament's struggle to gain control of the purse strings, particularly in view of the fact that the Constitutional Framers in 1787 were very much aware of the history of British institutions, and were undoubtedly influenced in considerable measure by that history and by the experiences of Englishmen in the constitutional struggle over the power of the purse.

Cicero said that ''one should be acquainted with the history of the events of past ages. To be ignorant of what occurred before you were born is to remain always a child. For what is the worth of human life, unless it is woven into the life of our ancestors by the records of history?''

To better understand how our own legislative branch came to be vested with the power over the purse, it seems to me that one should examine not only the roots of the taxing and spending power but also the seed and the soil from which the roots sprang and the climate in which the tree of Anglo-American liberty grew into its full flowering, because only by understanding the historical background of the constitutional liberties which we Americans so dearly prize can we fully appreciate that the legislative control of the purse is the central pillar—the central pillar—upon which the constitutional temple of checks and balances and separation of powers rests, and that if the pillar is shaken, the temple will fall. It is as central to the fundamental liberty of the American people as is the principle of habeas corpus, although its genesis and raison d'etre are not generally well understood. Therefore, before focusing on the power over the purse as the central strand in the whole cloth of Anglo-American liberty, we should engage in a kaleidoscopic viewing of the larger mosaic as it was spun on the loom of time.

Congress' control over the public purse has had a long and troubled history. Its beginnings are imbedded in the English experience, stretching backward into the middle ages and beyond. It did not have its genesis at the Constitutional Convention, as some may think, but, rather, like so many other elements contained in the American Constitution, it was largely the product of our early experience under colonial and State governments and with roots extending backward through hundreds of years of British history predating the earliest settlements in the New World.

Notwithstanding William Ewart Gladstone's observation that the American Constitution ''is the most wonderful work ever struck off at a given time by the brain and purpose of man,''—although there is some question with regard to that quotation—the Constitution was, in fact, not wholly an original creation of the Framers who met in Philadelphia in 1787. It ''does not stand in historical isolation, free of antecedents,'' as one historian has noted, but ''rests upon very old principles—principles laboriously worked out by long ages of constitutional struggle.'' The fact is, Gladstone himself, contrary to his quote taken out of context, recognized the Constitution's evolutionary development.

British subjects outnumbered all other immigrants to the colonies under British dominion. The forces of political correctness are trying to change American history these days, but it cannot be changed. The very first sentence of Muzzey's history, which I studied in 1928, 1929, and 1930—the very first sentence—says: ''America is the child of Europe.'' America is the child of Europe, political correctness notwithstanding.

They brought with them—those early settlers from England—the English language, the common law of England, and the traditions of British customs, rights, and liberties. The British system of constitutional government, safeguarded by a House of Commons elected by the people, was well established when the first colonial charters were granted to Virginia and New England. It was a system that had developed through centuries of struggle, during which many of the liberties and rights of Englishmen were concessions wrung—sometimes at the point of the sword—from kings originally seized of all authority and who ruled as by divine right.

The Constitutional Framers were well aware of the ancient landmarks of the unwritten English constitution. Moreover, they were all intimately acquainted with the early colonial governments and the new state constitutions which had been lately established following the Declaration of Independence and which had been copied to some degree from the English model, with adaptations appropriate to republican principles and local conditions. Let us trace a few of the Anglo-Saxon and later English footprints that left their indelible imprint on our own constitutional system.

Since time immemorial, Anglo-Saxon and later English kings had levied taxes on their subjects with the advice and consent of the witenagemot or the Great Council. When Parliament later grew out of the Great Council, and when knights and burgesses from the shires and boroughs, and representatives from the town and rural middle class were chosen to participate in Parliament, the king sought approval, from this representative body, of revenues for the operation of government, the national defense, and the waging of wars.

In return for its approval of the sovereign's request for money, Parliament learned that it could secure the redress of grievances and exact concessions from the king. You are asking for money? Then we, the people's representatives, want this first. Make these concessions, and then we will vote you the money. If he resisted, then Parliament would refuse to grant funding requests and new taxes. In 1297, almost 700 years ago now, Edward I reluctantly agreed to the ''Confirmation of the Charters,'' and, in doing so, he agreed, under clause 6 of the Parliamentary document, that is the future he would not levy ''aids, taxes, nor prises, but by the common consent of the realm.'' The significance of the event was twofold. In the first place, it was henceforth necessary that representatives of the whole people, and especially the middle class, be summoned to all Parliaments where any non-feudal taxation proposals were to be considered. Moreover, and of even greater importance, the control of the purse was lodged in Parliament, and this was a power that Parliament would frequently use to check the abuse of royal authority and to persuade the king to grant concessions.

This is the meat of the coconut. On two occasions in Edward II's reign (1307–1327), Parliament had asked for a redress of grievances before it granted taxes on personal property, and in both cases, the substance of Parliament's petitions were approved and enacted into statutes by the king. On one of these occasions, in 1309, the Commons granted a subsidy ''upon this condition, that the king should take advice and grant redress upon certain articles wherein they are aggrieved.'' Members of Congress should take note.

There are early instances of the allocation of funds for specific purposes, such as the Danegeld, which was a land tax levied to meet requirements arising from Danish invasions and to buy off the invaders. It usually was two shillings on each hide of land. It continued for some time after the danger of Danish invaders had passed, and, as a land tax, it was revived by William the Conqueror for specific emergency purposes such as defense preparations in 1084, when the King of Denmark threatened to enforce his claim to the English throne. Although continued as a land tax under William I's successors, its original character was lost, and its name, the Dangeld, fell into disuse in 1163, during the reign of Henry II. It became a source of revenue for general purposes.

Feudal charges were levied by kings before the creation of Parliament and appropriated for specific purposes. For example, scutage, a tax levied upon a tenant of a knight's fee in commutation for military service, was assigned to the financing of military measures. Funds collected to buy Richard I's freedom were paid into a special ''exchequer of ransom.'' The Saladin tithe was applied to financing the costs of a crusade, as were specific grants for Holy Land conquests in 1201, 1222, and 1270. In 1315, the Barons successfully insisted that Edward II's personal expenditures be limited to Pounds Sterling, 10 a day. By Edward III's day (1327–1377), it was becoming customary to attach conditions to money grants. Parliament often insisted that the money granted should be spent for certain specified purposes, and for no others.

In 1340, a grant was made by Commons to the king on the condition that it ''shall be put and spent upon the Maintenance and Safeguard of our said Realm of England, and on wars in Scotland, France, and Gascoign, and in no places elsewhere during the said Wars.'' In 1344, a two-year subsidy was granted and appropriated specifically for the war in France and for defense of the North against invasion by the Scots. Two years later, and again in 1348, it was stipulated that the aid must be used for defence against the Scots. Parliament granted a subsidy to Richard II in 1382 with the express provision that it go to ''the improvement of the defence of the realm of England and the keeping and Governance of his Towns and Fortresses beyond the Sea.'' The expenses of Henry IV's coronation, who reigned from 1399 to 1413, were funded by a special appropriation.

Sometimes, treasurers were appointed for overseeing a particular subsidy to ensure that the money was spent in accordance with the terms specified in the appropriations. Ship money was levied in early times in port cities to provide for naval maintenance and upkeep, the assumption being that the ports were the primary beneficiaries of a strong navy and were safeguarded from invasion by it. In 1382, the revenues from tonnage and poundage were specified for application to the safe keeping of the sea.

Some of the early appropriations went into details. For instance, a grant was made to Edward IV in 1472 to cover the expenses of 13,000 archers for one year at a daily wage of sixpence. Another grant was made by Commons to Edward IV in 1475 for his war in France on the condition that his departure for France be no later than St. John's Day in 1476, and he was not to receive the money until his ships were actually ready to leave for France.

Wool subsidies were specifically appropriated, on occasion, for defraying the cost of the garrison of Calais. The terms of numerous grants from the 14th century to the 17th century required the application of customs receipts to the defense of the country against invasion and to the protection of ships against pirates and hostile navies. The preamble to the subsidy Act of 1558–9 quoted Edward I as having recognized that his predecessors ''tyme out of mynde have had enjoyed unto them, by authoritie of Parliament, for the defence of the Realms and the happy saulfguarde of the Seas'' the proceeds of customs charges on certain goods.

Following the Restoration in 1660, Commons aimed at keeping Charles II short of funds to prevent the maintenance of a large standing army in time of peace. This was in contrast to their willingness to make grants for the navy, and they took precautions to ensure that appropriations for the Navy were spent for that purpose and no other, as, for example, in 1675, it was provided that the funds ''for building ships shall be made payable into the Exchequer, and shall be kept separate, distinct, and apart from all other monies, and shall be appropriated for the building and furnishing of ships, and that the account for the said supply shall be transmitted to the Commons of England in Parliament.''

The principle of appropriating the supplies (sums of money) for specific purposes only, instead of placing the funds without reserve into the king's hands, dates back at least as far as 1340. Here, then, as early as the mid-1300's—650 years ago—was the beginning of the current system of congressional appropriations as we know it. Members of Congress should be aware of the venerableness of this aspect of the modern appropriations process. It was not something that was conceived just yesterday and did not just come out of the woodwork.

After the Commons and Lords separated into two houses in the early 1300's, around 1339, 1340, and 1341, the House of Commons reserved to itself the power to initiate tax and money bills.

In 1395, the grant to the king, Richard II, was made ''by the commons with the advice and consent of the lords.'' It started out in the commons. In 1407, the king—Henry IV, the former duke of Lancaster—agreed that he would listen to reports about money grants only ''by the mouth of the speaker of the Commons.'' The right of the commons to originate taxes and money grants was a right by custom, not a statutory right, but it was a custom that was not easily shaken. For example, Henry IV had failed in 1407 when he tried to proceed first through the House of Lords. The Commons refused to accept such ''a great prejudice and derogation of their liberties.'' The U.S. Constitution, in Article I, reflects the very same principle: ''All Bills for raising revenue shall originate in the House of Representatives.''

As the years passed, Parliament extended its power in the control of government expenditures and the earmarking of appropriations of money for particular purposes. Almost always it was specified that general taxes to the king were for national defense, a part of the custom on wool was to be used for the maintenance of Calais, as I have earlier stated, and the tunnage and poundage tax was to be spent for such specific purposes as the navy and ''the safeguarding of the sea and in no other way.'' The royal income was to be used for the expenses of the royal household.

During the Commonwealth, the House exercised full control over government expenditures, and after the Restoration in 1660, the House claimed, and Charles II grudgingly conceded, the right of appropriation in the Appropriation Act of 1665. From that time, it became an indisputable principle that the moneys appropriated by Parliament were to be spent only for the purposes specified by Parliament. Since the reign of William and Mary (1689–1701), a clause was inserted in the annual Appropriation Act forbidding—forbidding under heavy penalties—Lords of the Treasury to issue, and officers of the Exchequer to obey, any warrant for the expenditure of money in the national treasury, upon any service other than that to which it was distinctly appropriated.

The right of Parliament to audit accounts followed, as a natural consequence, the practice of making annual appropriations for specified objects. Even as early as 1340, a committee of Parliament was appointed to examine into the manner in which the last subsidy had been expended. Henry IV resisted a similar audit in 1406, but in 1407 he conceded Parliament's right to look at the ways the appropriations were spent. Such audits became a settled usage.

These two principles—that of appropriations and that of auditing—were united by the framers in a single paragraph of Article I, section 9, of the U.S. Constitution: ''No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.''

So, Mr. President, as we can see, legislative control over taxation bears

close relation to the history of Parliament. The witenagemot possessed the right of advice and consent regarding taxation, although the right was probably exercised only rarely because the royal needs in the Anglo-Saxon era were normally supplied by income from royal farms, fines, and payments in kind or the quasi-voluntary tribute paid by the kingdom to its sovereign. The Norman kings exacted feudal aids and other special varieties of taxation, retaining and adding to the imposts of Saxon kings. But there is scant evidence as to what extent the council was asked by the kings. Although a tax in the reign of Henry I (1100–1135) was described as the ''aid which my barons gave me,'' it appears that until the time of Richard I (1189–1199), the king usually merely announced in assembly the amounts needed and the reasons for his imposing subsidies. By the feudal doctrine, the payer of a tax made a voluntary gift for relief of the wants of his ruler.

Magna Carta (1215) provided that, except for three feudal aids, no tax should be levied without the assent of a council duly invoked. But as the burden of taxation increased, the necessity for broadening the tax base to all classes of society also increased. Hence, the establishment of the representative system is Parliament had its essential origin in the necessity for obtaining the consent, by chosen proxy, of all who were taxed. After the ''Confirmation of the Charters'' in 1297, the right of the people of the realm to tax themselves through their own chosen representatives became an established principle. The Petition of Rights, reluctantly agreed to by Charles I in 1628, emphatically reaffirmed the principle. Charles had attempted a forced loan in 1627 to meet his urgent money needs. This was, in effect, taxation without parliamentary sanction, and many refused to contribute, whereupon Charles arbitrarily imprisoned several persons who would not pay. When he called Parliament into session the next year, twenty-seven members of the new house had been imprisoned for failure to pay the forced loan. When Charles demanded the money he so desperately needed, the commons paid no attention. They decided almost at once to put their major grievances in a Petition of Rights. Among these, the Petition asked that arbitrary imprisonment should cease and that arbitrary taxation should cease and ''no man hereafter be compelled to make or yield any gift, loan, benevolence, tax, or such like charge, without common consent by Act of Parliament.'' When Charles granted the Petition of Rights, the Commons voted him taxes.

The insistence by Charles I that he possessed a divine right to levy taxation and could seek funds directly from citizens, created the conditions for civil war in England. James I had decided to raise revenue by imposing an import duty on almost all merchandise, and the political struggle intensified when Charles acted to levy tonnage and poundage without parliamentary authority. After the House of Commons passed the Petition of Rights, it also moved to curb the King's power to raise revenue from customs duties, precipitating another clash with Charles.

Charles I tried to govern without Parliament by resorting to various means of raising revenue. Additional Knighthoods were created, requiring the beneficiaries to pay a fee to the King. Those who refused were fined. Other efforts to raise money led to increased resentment from citizens and threw the country into a state of crisis. Charles lost both his throne and his head.

The Bill of Rights, to which William III and Mary were required to give their assent before Parliament would make them joint sovereigns, declared ''that levying money for or to the use of the crown, by pretense of prerogative, without grant of Parliament, for longer time, or in other manner than the same is or shall be granted, is illegal.''

It was the violation of this constitutional principle of taxation by consent of the taxpayers, through their chosen representatives, that led to the revolt of the colonies in America. The Declaration of Independence explicitly names, as one of the reasons justifying separation from England, that of her ''imposing taxes on us without our consent.''

There is, then, a certain historic fitness in the fact that first among the powers of Congress enumerated in Article I, section 8, of the Constitution is the power ''to lay and collect taxes.'' The power to appropriate monies is also vested by Article I solely in the legislative branch—nowhere else; not downtown, not at the other end of Pennsylvania Avenue, but here in the legislative branch.

Mr. President, we have all perhaps been subject to the notion that the Federal Constitution with its built-in systems of checks and balances, was an isolated and innovative new instrument of government which sprang into existence—sprang into existence—during three months of meetings behind closed doors in Philadelphia, and that it solely was the product of the genius of the Framers who gathered there behind closed doors to labor to make it come about. However, as I have also said heretofore, American constitutional history can only be fully understood and appreciated by looking into the institutions, events, and experiences of the past out of which the organic document of our nation evolved and took unto itself a life and soul of its own.

To ascertain the origin of the Constitution, then, it must be sought among the records treating of the fierce conflicts between kings and people—it cannot be found just in Madison's notes, but it must be sought among the records of treating fierce conflicts between kings and people—the evolution of chartered rights and liberties, and the development of Parliament in the island home of those hardy forebears who crossed the Atlantic to plant new homes in the wilderness and who transplanted to the English colonies of the New World the familiar institutions of government which would assure to them the rights and liberties which they, as British subjects in a new land, held to be their due inheritance.

The U.S. Constitution was, in many ways, the product of many centuries—many centuries—and it was not so much a new and untried experiment as it was a charter of government based to some extent on the British archetype, as well as on State and colonial models which had themselves been influenced by the British example and by the political theories of Montesquieu and others, who believed that political freedom could be maintained only by separating the executive, legislative, and judicial powers of government, which powers, when divided, would check and balance one another, thus preventing tyranny by any one man, as had been the case in France.

Moreover, unlike the British Constitution, which, as I say, was, generally, an unwritten constitution consisting of written charters, common law principles and rules, and petitions and statutes of Parliament, the American Constitution was a single, written document that was ratified by the people in conventions called for the purpose.

In a real sense, therefore, the U.S. Constitution was an instrument of government that was the result of growth and experience and not manufacture, and its successful ratification was, in considerable measure, due to the respect of the people for its roots deep in the past. The mainspring of the constitutional system of separation of powers and delicate checks and balances was the power over the purse, vested—where? Here in the legislative branch. That power guaranteed the independence and the freedom and the liberties of the people.

James Madison, who is justly called the father of the Constitution, summed up, in a very few words, the significance of the power over the purse in the preservation of the people's rights and liberties, and the fundamental importance of the retention of that power by the people's elected representatives in the legislative branch.

He did this in the Federalist No. 58, in which he referred to the House of Representatives and said:

> They in a word hold the purse; that powerful instrument by which we behold in the history of the British constitution, an infant and humble representation of the people, gradually enlarging the sphere of its activity and importance, and finally reducing, as far as it seems to have wished, all the overgrown prerogatives of the other branches of the government. This power over the purse, may in fact be regarded as the most compleat and effectual weapon with which any constitution can arm the immediate representatives

of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure.

Let me repeat just the last portion of the words by Madison.

This power over the purse, may in fact be regarded as the most compleat and effectual weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure.

Mr. President, the elected representatives of the people in this body should remember those weighty words by Madison, the father of the Constitution. If they wish to know the value of constitutional liberty, they might retire to those words and read.

Mr. President, to alter the constitutional system of checks and balances, by giving the executive—any executive, any President, Democrat or Republican—a share in the taxing or appropriations power through the instrument of an item veto or enhanced rescission would, in my view, be rank heresy. As we have seen, the entrusting of the power over the purse to the legislative branch was no accident of history but rather the result of over 600 years of contest with royalty. To chisel away this rock, that through bloody centuries has undergirded the hard-won, cherished rights of freemen in England and in America, should be anathema to any informed and thoughtful citizen in these United States.

To quote Aristotle: ''Of all these things the judge is Time.'' From our vantage point, then, Mr. President, as we take the long look backwards into the murky past, history clearly teaches us that the power over the purse—the power to tax and to appropriate funds—wisely came to be lodged, more than 600 years ago, in the directly elected representatives of the people; that this principle lies at the foundation, and is a chief source, of our liberties; and that it is not a power that should be shared by a king or a President.

That our own Constitutional Framers clearly intended for the power over the purse to be solely in the hands of the elected representatives of the American people, we have only to review the words of Madison and Hamilton as they appeared in the Federalist Papers.

Hamilton in the Federalist #78 stated: ''The legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated.''

Madison in the Federalist #48 stated, ''The legislative department alone has access to the pockets of the people.'' In Federalist Paper #58—as I have already pointed out—Madison stated: ''This power over the purse may, in fact, be regarded as the most compleat and effectual weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance and for carrying into effect every just and salutary measure.''

Thus, the founders of this republic left no doubt as to what branch of the government had control over the purse strings. The Executive was not given any control over the purse strings, with the single exception of the right of the President to veto, in its entirety, a bill—any bill—and in this case a bill making appropriations.

There was little discussion of the Presidential veto at the convention, as a reading of the convention notes will show. There was absolutely no discussion whatsoever with reference to a line item veto or any such modification thereof as we are now contemplating. Henry Clay, one of the greatest Senators of all time, in a Senate Floor speech on January 24, 1842, referred to the veto as ''this miserable despotic veto power of the President of the United States.'' That is what he thought of a Presidential veto. It is not hard to imagine what Henry Clay would think of this conference report that is before the Senate today.

It is ludicrous—nay, it is tragic—that we are about to substitute our own judgment for that of the Framers with respect to the control of the purse and the need to check the Executive. Yet, that is precisely what we are about to do here today. We are about to succumb, for political reasons only, to the mania which has taken hold of some in this and the other body to put that most political of political inventions, the so-called ''Contract with America'' into law.

Saying this, I do not question but that some Senators genuinely, sincerely, and conscientiously believe that this is the right thing to do, and that this is the way to get a handle on the budget deficits.

To quote Homer in ''The Iliad'': ''Not if I had ten tongues and ten mouths, a voice that could not tire, lung of brass in my bosom'', would I be able to persuade those who are motivated by political expediency that future generations will condemn their shortsightedness and hold them responsible for the damage to our constitutional system that will be wrought by this radical shift of power from the legislative to the executive branch. ''Who saves his country, saves all things, saves himself, and all things saved do bless him; Who lets his country die, lets all things die, dies himself ignobly, and all things dying curse him.''

Most Presidents in recent times have espoused the line-item veto. I fought against surrendering this power to President Reagan, I fought against surrendering the power to President Bush, and I just as fervently oppose giving President Clinton—or any other President—a line-item veto or any modification thereof. I have taken an oath many times to support and defend the Constitution of the United States. My contract with America is the Constitution of the United States. I paid 15 cents for this copy several years ago. It cost $1, I think, now. There it is, well-worn, taped together, and pretty well marked up. But that is my contract with America.

So I have taken an oath many times to support and defend this contract with America, the Constitution of the United States, and I do not intend to renege on my sworn oath by supporting this conference report. It is a malformed monstrosity, born out of wedlock. Although the House voted on this version of the so-called line-item veto, the Senate did not. That is why I would say it was born out of wedlock.

It is a profanation of the temple of the Constitution which the Framers built, and it will prove to be an ignis fatuus in achieving a balanced budget. Its passage will effectuate a tremendous shift of power from the legislative branch to the Executive Branch, and it will be used as a club to be held over the head of every member of the United States Senate and House of Representatives by power hungry Presidents who will seek to impose their will over the legislative process to the detriment of the American people, whose elected representatives in Congress will no longer be free to exercise their judgment as to what matters are in the best interests of the states and the people whom they serve.

This so-called line-item veto act should be more appropriately labeled ''The President Always Wins Bill.'' From now on, the heavy hand of the President will be used to slap down Congressional opposition wherever it may exist. Yet, I have no doubt that this measure will pass. Political expediency will be the order of the day, for we are like Nebuchadnezzar, dethroned, bereft of reason, and eating grass like an ox.

''O, that my tongue were in the thunder's mouth! Then with a passion would I shake the world.''

The efforts of those who oppose this surrender of power to the President may be likened to the last stand of General George Armstrong Custer, who with 200 of his followers, were wiped out by the Indians at the Battle of the Little Big Horn, in Montana, in 1876, but I see this as the Battle of the ''Big Giveaway'', and I do not propose to go along.

As a matter of fact, I do not believe that it is within the capability of Congress to give away such a basic Constitutional power as the control over the purse strings, because that is the fundamental pillar upon which rests the Constitutional system of separation of powers and checks and balances.

I know there are those who say that it will only be for 8 years—from January 1, 1997, to January 1, in the year 2005. Senators will note that the bill does not take effect upon passage, upon enactment, the reason being that the majority party does not want to give this President this line-item veto. He may use it against them. And so they have crafted the date to follow the next

election so that if President Clinton is able to use this ill-begotten measure at all, he would have to be reelected before he can do it. So they say it will only be for 8 years.

I do not believe that the constitutional powers of Congress can be so cavalierly shifted to the executive branch, whether it be for 8 years or for 1 year or for 6 months.

It is instructive to reflect on what George Washington had to say about checks and balances and separation of powers in his Farewell Address, and I shall quote therefrom: ''It is important that the habits of thinking in a free country should inspire caution in those entrusted with its administration to confine themselves within their respective constitutional spheres, avoiding in the exercise of the powers of one department, to encroach upon another. The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create, whatever the form of government, a real despotism. * * * The necessity of reciprocal checks in the exercise of political power, by dividing and distributing it into different depositories, and constituting each guardian of the public weal against invasions of the others, has been evinced by experiments ancient and modern * * * To preserve them must be as necessary as to institute them. If, in the opinion of the people, the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates.''

It is my firm belief that we are about to enact legislation that is clearly unconstitutional, and I fervently hope that it will be struck down by the courts. But it might not be. In any event, this possibility does not relieve us of our own responsibility to make a judgment regarding the constitutionality of a measure which we are about to enact. Our oath to support and defend the Constitution against all enemies, foreign and domestic, requires no less of us than this. But I fear that the die, as Caesar said in the year 49 B.C. as he stood before the Rubicon, is cast. Before this day has ended, the Senate will have turned its back in all probability on the Constitution and partially disenfranchised the very people we are charged to represent, and it will have done so to its own great shame.

The Policraticus of John of Salisbury, completed in 1159, we are told, ''is the earliest elaborate mediaeval treatise on politics.'' In it, we find a reference to the House of Caesar and an account of the means by which each in this line of Roman rulers came to his end. Julius, as we all know, was done to death in 44 B.C., at the hands of Brutus, Cassius, and others as they gathered on the Ides of March where the Senate was meeting. When Caesar saw those about him with their daggers drawn, he veiled his head with his toga and drew down its folds over his eyes that he might fall the more honorably.

Nero, who reigned from 54 to 68 A.D., after he had heard that the Senate had condemned him to death, begged that someone would give him courage to die by dying before him as an example. When he perceived that the horsemen were drawing near, he upbraided his own cowardice by saying, ''I die shamefully.'' So saying, he drove the steel into his own throat and thus, says John of Salisbury, came to an end the whole house of the Caesars.

Here, now, we see in the proposal before us, the Legislative Branch being offered the dagger by which, with its own hands, it too may drive the steel into its own throat and thus die shamefully.

I say to Senators, beware of the hemlock. Let us pause and reject this measure lest the ''People's Branch'' suffer a self-inflicted wound that would go to the heart of the Constitutional system of checks and balances—the power over the purse, a power vested by the Constitution in the Legislative Branch, and in the Legislative Branch only.

Section 9, article I of the Constitution says, ''No money shall be drawn from the Treasury, but in consequence of appropriations made by law.'' And in the very first section of article I, it says, ''All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives.''

So here is where the power is vested to pass a law, to enact a law, to amend a law. But this conference report will change that. It will place into the hands of the Chief Executive a power which in essence will be a power to amend not only a bill but a law. A bill which has already been signed into law by the President can then within the next 5 days be amended almost single handedly by him by way of the rescissions process which is a loaded dice procedure. He cannot lose.

Now, let us take a look at this conference report and examine it.

For the record, let it be noted that this measure is not a true line-item veto. A true line-item veto would allow the President to actually line out items with which he did not agree in an appropriations bill or, depending on how such legislation were to be written, in any other bill that would come across his desk for signature.

And in some States he may not only line out the item but he may reduce the item. He may line out language. But we are talking about the line-item veto on the Federal level.

The measure before us would allow the President not to line out items in a bill, but rather to send special messages to Congress deleting or rescinding certain items from bills after he has signed them into law. Not only that, but this measure will also allow any President to rescind portions of spending measures that are contained in their accompanying tables, committee reports, or statements by the managers on the part of the conferees of both Houses. This approach is actually far more effective in getting at ''presidentially-deemed'' unacceptable spending than would be a direct line-item veto authority. This is so because bill language does not lend itself to specificity, and line-item veto authority would force the President to eliminate large lump sums in order to get at specific items he did not like, when perhaps he was in agreement with most of the spending in the lump sum.

The conference report would have the effect of stripping from the people's elected representatives, in Congress—the President is not directly elected by the people. The President is indirectly elected by the people. We are the elected representatives of the people. And here, in this forum of the States, we represent the States and the people.

It would take much of that power and place it, instead, in the hands of the occupant of the Oval Office and his unelected bureaucrats. This conference report effectively places in the hands of the President and unelected bureaucrats—I do not use those words pejoratively, but they are unelected and they are bureaucrats. And we have to have them. But, it places in the hands of the President and unelected bureaucrats, ultimate control over the Nation's finances.

I implore Senators, I beseech, I importune Senators to carefully read the conference report, to see how this is done. It is all plainly there in black and white. And it is a ''heads-I-win, tails-you-lose'' proposition for the President of the United States. It is an eye opener. Read it, Senators.

Section 1021(a) of this conference agreement would allow the President to cancel in whole—(1) any dollar amount of discretionary budget authority; (2) any item of new direct spending—see, it does not get into entitlements that are already in the law, and they are what is causing the budget deficits, but they escape the reaches of this conference report—any item of new direct spending; or (3) any limited tax benefit; as long as the President notifies the Congress ''within 5 calendar days (excluding Sundays) after the enactment of the law providing the dollar amount of the discretionary budget authority, item of new direct spending, or limited tax benefit that was canceled.''

Now let us look at section 1023(a), which states, in part:

> The cancellation of any dollar amount of discretionary budget authority, item of new direct spending, or limited tax benefit shall take effect upon receipt in the House of Representatives and the Senate of the special message notifying the Congress of the cancellation.

Once the message comes in the door, the cancellation takes effect.

> If a disapproval bill for such special message is enacted into law, then all cancellations disapproved in that law shall be null and void and any such dollar amount of discretionary budget authority, item of new direct spending, or limited tax benefit shall be

effective as of the original date provided in the law to which the cancellation applied.

Section 1025(b) goes on to detail the time period in which Congress must pass its rescission disapproval bill. The conference agreement allows for:

a Congressional review period of thirty calendar days of session, during which Congress must complete action on the rescission disapproval bill and present such bill to the President for approval or disapproval;

an additional ten days (not including Sundays) during which the President may exercise his authority to sign or veto the rescission disapproval bill; and

if the President vetoes the rescission disapproval bill during the period provided, Congress is allowed an additional five calendar days of session to override the veto.

Allowing a presidential rescission to take effect unless specifically disapproved by the Congress has the force of taking from a majority of the people's representatives final say over how tax dollars are spent. That is most certainly the impact, Mr. President, because under this conference report, for all practical purposes, it would be necessary for Congress to marshal a two-thirds majority in both Houses in order to enact any appropriation to which the President might conceivably object. It is a stacked deck, and Congress will lose every time.

Consider this scenario: Once the House and Senate have passed an appropriations bill, the President can then, if we were to adopt this conference report, use his new-found rescission power to carve that appropriations bill up just the same as if he were carving a Thanksgiving turkey—a little here, a little there; the dark meat here, the white meat there.

After he or his bureaucrats decide, over the will of a majority of the representatives of the people, what they will carve out of duly enacted legislation, the President will then transmit a special message to Congress. Once he transmits his special message, Congress would have thirty days to pass a rescission disapproval bill. But since a disapproval bill is a direct denial of the President's request, and since the President is the one who proposed the rescission in the first place, I think we are safe in assuming that he would nearly always veto any such disapproval bill passed by both Houses. Therefore, it would be fairly pointless to even bring a disapproval bill to the Floor for a vote unless it had the support of two-thirds of the Senators and two-thirds of the House of Representatives. And it will almost never have that kind of support. This conference report loads the dice against Congress.

I used to play an old tune called, ''I Am A Roving Gambler.'' It did not say anything about that roving gambler having loaded dice. But this conference report loads the dice and the President will always win—always. And you and I will always lose, and the people we represent will always lose.

Subsequent to the President's veto of the disapproval bill, Congress, of course, would have the opportunity to attempt an override. This time, however, the Congress would be limited to five days of consideration. In any event, it would take a vote of two-thirds of both Houses to override the President's veto of a disapproval bill.

In other words, under this conference report, Congress may actually have to pass an appropriation by a two-thirds supermajority in both Houses, before that appropriation could finally be nailed into law. Is that what Senators want? Are we truly intent on installing minority rule in this country? In our efforts to help get spending under control, are we running over the basic principle of majority rule in the process?

Additionally, by allowing the President—now, this is a radical departure from any idea I have ever heard suggested with reference to a line-item veto—by allowing the President to rescind new budget authority in bills or their accompanying tables, reports or statements of managers, or charts, the President's veto power is no longer limited to the various line-items in an appropriations bill. In other words, this conference agreement would enable a President to rescind any new budget authority contained in either an appropriations bill, or any table, report, or statement of managers accompanying any appropriation bills, by simply notifying Congress of such rescissions by a special message not later than five calendar days after enactment of an appropriations act.

So, he can go into this conference report—this does not go to the President for him to veto, the bill goes to the President for his signature or veto. This conference report does not go. He never sees it. Nor does the statement of the managers go, but he can reach into them through his bureaucrats who advise him, ''Mr. President, there is a chart in this conference report on page 27, and you will find in that chart a certain item for certain States or certain regions of the country,'' and he can say, ''Rescind them.''

Congress' goal should be to give Presidents a stronger tool than they now have to reduce unnecessary spending. But, I do not believe, Mr. President, that we have to gut the power of the purse in order to give the President that new help. The approach outlined in this conference agreement would tend to arbitrarily substitute a President's judgment about the needs of the various individual states for the judgment of the duly elected representatives of those states and districts. I am sure that the people who vote to send us here do so at least in part because they feel we understand the needs of the states we represent and the views of the people of those states. I am equally sure that the people do not intend for our judgment and our votes to be summarily overruled. I do not think they intend that. I think if they really understood this conference report, if they really understood what we are about to do here, I do not think that the people would intend for our judgment and our votes to be summarily overruled or dismissed by a President—this President or any other President. Nor would I suspect that the people of our various states would want the deck so stacked against their elected representatives as to force us to muster votes of two-thirds of both Houses of Congress to overrule the President's judgment on a matter we thought important for the good of our states. But, this conference report is rigged, and it deals the cards that way and leaves the President and a minority in each body with the ultimate ace in the hole.

Mr. President, what we are talking about here is a measure that would increase exponentially the already overwhelming advantage that is held by the Executive in his use of the veto power. Out of the 1,460 regular vetoes that have been cast by Presidents directly over these past 208 years, only 105—or 7 percent—have been overridden in the entire course of American history. In 208 years, from the Presidency of George Washington, who vetoed two bills, and it was he who said the President has to veto the whole bill or sign it or let it become law without his signature. He cannot item veto it. That was George Washington. In 208 years from the Presidency of George Washington right down through President Clinton today, Congress has only been able to muster enough votes to override a President's veto 105 times, 7 percent of the total. In this case, this so-called enhanced rescission authority requirement for a disapproval resolution coupled with the President's veto power, creases a ''heads I win, tails you lose'' situation.

This overwhelming advantage on the side of a President is magnified by the fact that often the funds rescinded are likely to be of importance to only a few states or a single region. They may even be important to no more than a single congressional district. If that is the case, then how many Members of either House are going to be interested in overriding the President's veto? How many Senators are going to think it is worth standing up to the President and voting against reducing the deficit for the sake of one lonely House Member or a handful of Senators or a few Members of the House?

Take, for instance, the following six States: Maine, with 2 votes in the House; New Hampshire, with 2 votes; Massachusetts, 10 votes; Vermont, 1 vote; Rhode Island, 2 votes; and Connecticut, with its 6 votes. Collectively, those states have 23 votes in the House of Representatives and 12 votes in the Senate. Those 35 individuals are going to find it extremely difficult, if not impossible, to interest two-thirds of the total House and Senate membership in overriding a presidential veto on an issue of concern only to the New England region. The type of ''divide and conquer'' strategy, which this conference report creates for the White House to use, would have a devastating

effect on the power of the purse, and the system of checks and balances, which is the very taproot of the American constitutional system of government.

Not only will this conference report, when enacted into law, militate against small rural states like my own—which can muster only three votes in the other body—but it will be a prescription for minority rule. For over 200 years, the theory undergirding our republican system of government—some people speak of ours as a democracy. It is not a democracy. Ours is not a democracy. It would be impossible for a government that extends over 2,500 miles from ocean to ocean and has 250 million people to be a democracy. People should learn their high-school civics.

This is a republican form of government. And the theory undergirding our republican system of government has been that of majority rule. This conference report will substitute minority rule for majority rule by requiring a supermajority vote in both Houses to adopt a disapproval measure overriding a presidential veto of appropriations passed initially by simple majorities in both Houses. A minority of 34 votes in the Senate will sustain a presidential veto that may have already been given a two-thirds vote to override in the other body. In other words, the President and 34 Senators can overrule the wishes of the other 66 Senators and 435 Members of the House—if this is not minority rule in the field of legislation, what else may one call it? Do Senators wish to substitute minority rule for majority rule in the legislative process?

It is difficult to imagine why this body would want to deal such a painful blow, not only to itself, but to the basic structure of our constitutional form of government and to the interests of the people we represent.

Whether the President is a Democrat or a Republican is not my concern. Whether one party or another is in power in the Congress is not my concern here. My concern is with unnecessarily upsetting the balance of powers as laid out in the Constitution, and this conference report simply gives away much of the congressional control over the purse strings to a President.

What is fundamentally at stake here is the division of powers between the executive and legislative branches of Government, and the dangerous effects of instituting minority government. This is not a disagreement over reducing the deficit, or over giving the President some additional power to help do that. It is a disagreement over disrupting the people's power over the purse beyond what is necessary to accomplish our deficit reduction goal.

If we enact this conference report into law, control of the Nation's purse strings by a majority in the legislative branch would be severely impaired. That is a fact. It can be demonstrated by a careful reading of the report, and we ought not go down that road, because there is no turning back.

Mr. President, the most effective instrument of restraint possessed by the legislative branch against a powerful and reckless President is the control over the purse. For example, cutting off the flow of funds for an activity is the surest way of checking unwise presidential use of power. We have seen that in the effective use of curtailing funding in the example of our ill-advised adventure in Somalia.

I was the author of the amendment that drew the line which, in essence, said, ''All right, Mr. President, after that date, if you want to stay, you come back, make your case before Congress, and seek the money for it.''

Were the President to be granted enhanced rescission authority, though, we would have seriously unbalanced the delicate system that was put in place by the Constitution. We would have ceded congressional control over the purse to an executive who could then use it to affect our ability to check misadventures in foreign or domestic policy by threatening important initiatives in one or more states or a region.

The Framers of the Constitution were induced to give to the President the veto power, and they did this for two reasons: the first, was a desire to protect the executive against possible encroachments from the legislative branch, and the other was a desire to guard the country against the injurious effects of hasty and bad judgment.

Mr. President, it was a gross misapprehension on the part of the Framers who feared that the executive branch would be too feeble to successfully contend with the legislature in a struggle for power. Little did the Constitutional Framers dream that the powers of the chief executive would grow enormously with the passage of time. They could not foresee the powers that would flow to the President through his patronage as titular head of a political party. Nor, of course, could they foresee the power of the ''bully pulpit'' that would come with the invention of radio and television and modern telecommunications, which enable the President, at the snap of a finger, to summon before him for immediate disposal the advantages of the modern news media which enable him to appeal directly to the American people with one voice. The fears of the Framers, in this respect, were not only unfounded, but the constant encroachment, which they were concerned about, has not been by the legislative branch on the executive but has been just the opposite—there has been a constant erosion by the executive of the legislative authority.

The legislative branch of Government meets periodically; its power lies in its assembling and acting; the moment it adjourns, its power disappears. But the executive branch of the Government is eternally in action; it is ever awake on land and on sea; its action is continuous and unceasing, like the tides of some mighty river, which continues to flow on and on and on, swelling, and deepening, and widening, in its onward progress, until it sweeps away every impediment, and breaks down and removes every frail obstacle which might be set up to stay or slow its course.

The legislative branch sleeps but there stands the President at the head of the executive branch, ever ready to enforce the law, and to seize upon every advantage which presents itself for the extension and expansion of the executive power. And now, we are preparing here in the Senate to augment the already enormous power of an all-powerful chief executive by adopting a conference report that will shift the real power of the legislative branch to the other end of the avenue and place that power in his hands—to be used against the legislative branch, to be used against the elected representatives of the people in legislative matters. It is as if the legislative branch has been seized with a collective madness. The majority leadership in both Houses will have succeeded in enacting a major plank in the so-called Contract With America.

Mr. President, let me say once more, this is my contract with America: The Constitution of the United States. It cost me 15 cents several years ago. It can be gotten from the Government Printing Office, not for 15 cents today, but perhaps for a dollar. That is my contract with America.

The majority leadership in both Houses will have succeeded in enacting a major plank in its so-called Contract With America while it turns its back on the Constitution—the real Contract with America, which we have all sworn to support and defend—and the majority party in Congress will forever carry on its hands the stain of this unpardonable and gross betrayal of the Constitution and its Framers.

Let us contemplate the effect that the passage of this conference report would have on the power of the chief executive. At the present time, if all Senators are voting, 51 Senators are required to constitute a majority in the passage of a bill, while in the other body 218 Members are required to constitute a majority in the passage of that same bill. If the bill is vetoed, then two-thirds of the Senate, or 67 votes, if all Senators are present and voting, will be required to make that bill become a law over a presidential veto. In other words, that veto by one man in the Oval Office will be worth the vote of 16 additional Senators, while in the House that presidential veto by one man will be equal to 72 votes—a supermajority of 218 being required to pass the bill, and a supermajority of 290 being required to override a presidential veto, or a difference of 72 votes. In other words, a veto cast by a single individual who holds the presidency, will be worth the

votes of 88 members of the House and Senate. Is this not enough, Mr. President, that he would wield so vast and formidable an amount of patronage, and thereby be able to exert an influence so potent and so extensive? Must there be superadded to all of this power, a legislative force equal to that of 16 Senators and 72 members of the House of Representatives?

I have viewed the veto power simply in its numerical weight, and the aggregate votes of the two Houses, but there is another important point of view which ought to be considered. It is simply this: the veto, armed with the constitutional requirement of a two-thirds vote of both Houses in order to override, is nothing less than an absolute power. In all of the vetoes over the past 2 centuries, as I have said, only about 7 percent of the regular vetoes have been overridden. When it comes to overriding the vetoes of bills of disapproval of presidential rescissions, the President's veto will constitute virtually an unqualified negative on the legislation of appropriations by Congress. If nothing can set it aside but a vote of two-thirds in both Houses, that veto of disapproval bills might as well be made absolute and now because that is what it will amount to. The Constitutional Framers did not intend for such raw power over the control of the purse strings to be vested in the hands of any chief executive.

Do Senators know what they are doing when they vote to adopt this conference report? They are voting willingly to diminish their own independence as legislators. No longer will they feel absolutely independent to speak their minds concerning any President, any administration or administration policies in their speeches on this Floor, and no longer will they exercise a complete and uninhibited independence from the chief executive when casting their votes on matters other than appropriation bills because they will know that the President, with this new and potent weapon in his arsenal, can punish them and their constituencies for exercising their own free independence in casting a vote against administration policies, against presidential nominees, against approval of the ratification of treaties.

Now, Mr. President, I find in the New York Times of today that not only I am concerned about this loss of independence that we will suffer if we adopt this conference report. In today's New York Times, I find an article by Robert Pear titled ''Judges' Group Condemns Line-Item Veto Bill.''

I will just read one paragraph as an excerpt therefrom. Here is what Judge Gilbert S. Merritt, chairman of the Executive Committee of the Judicial Conference, has to say: ''Judges were given life tenure to be a barrier against the wind of temporary public opinion,'' said Judge Merritt. ''If we didn't have judicial independence, I'm not sure we could maintain free speech and other constitutional liberties that we take for granted.'' So the judges are concerned about judicial independence. I am concerned about the independence of lawmakers once this conference report becomes law.

Plutarch tells us that Eumenes came into the assembly, and delivered himself in the following fable. It was a fable about a lion. ''A lion once, falling in love with a young damsel, demanded her in marriage of her father. The father made answer, that he looked on such an alliance as a great honor to his family, but he stood in fear of the lion's claws and teeth, lest, upon any trifling dispute that might happen between them after marriage, he might exercise them a little too hastily upon his daughter. To remove this objection, the amorous lion caused both his nails and his teeth to be drawn immediately; whereupon, the father took a cudgel, and soon got rid of his enemy. This,'' continued Eumenes, ''is the very thing aimed at by Antigonus, who is liberal in promises, till he has made himself master of your forces, and then beware of his teeth and claws.''

Mr. President, President Clinton wants this conference report. President Bush would have liked to have had it. President Reagan wanted it. All Presidents, with the exception of President Taft, have wanted the veto power. So perhaps this President is about to be given the power which he will not be able to exercise, however, under its phraseology, unless and until he is reelected for the second term.

Mark my words, Mr. President, once he gets it—or any other President—then beware of his teeth and claws. Senator BYRD, you will not be as independent in your exercise against freedom of speech, against the policies of an administration, once that President has in his power this weapon. Beware of his teeth and claws. Senator BYRD, you might not have voted against Clarence Thomas if the President had this effective weapon in his arsenal. I do not know about that.

In other words, Mr. President, this power of rescinding discretionary spending will not be used by a President to reduce the deficit. It is not a deficit-reducing tool because it does not get at entitlements, past entitlements. They are one of the real causes of the deficit. This conference report does not get to them. It is not a deficit-reduction tool. Discretionary spending has already been cut to the bone. Entitlement spending, which is a real cause of growth in the deficits cannot be touched under this conference report. No. This new power of rescissions will be used by a President to threaten and coerce and intimidate members of the legislative branch to give the President what he wants or he will cut the projects and programs that our constituents need and want. It will be a sword of Damocles suspended over every Member.

This conference report, when it is examined in its minutest detail, will constitute an inhibition on freedom of speech. It is going to constitute an inhibition on the independence of judges. That is what this judge feared. I say it will constitute an inhibition on freedom of speech in both Houses, an inhibition on a Member's casting of votes on administration policies, an inhibition on every Member's free and untrammeled independence in carrying out his duties and responsibilities toward the constituents who send him or her here. What Senator is willing to surrender his independence of thought and action and speech—we will see—to an already all-powerful executive, made more powerful by a major share in the control of the purse strings given to him by this conference report, a power that no Chief Executive has heretofore, in the course of over 200 years, shared.

The political leadership of the majority party in this Congress may reap temporary political gain from the enactment of this unwise measure, but the damage that will have been done to our constitutional system of checks and balances will constitute a stain upon the escutcheon of the Congress for a long time to come. As the Roman Senator Lucius Postumius Megellus said to the Tarentines: ''Men of Tarentum, it will take not a little blood to wash this gown.'' It will take not a little blood to wash this gown.

The majority party may reap an immediate and temporary political gain from this action, but in ''reaching to take of the fruit'' of this amendment, its proponents—like those in Milton's ''Paradise Lost''—will ''chew dust and bitter ashes.''

In a March 10, 1993, hearing before the House Government Operations Committee, Mr. Milton Socolar, Special Assistant to the Comptroller General of the United States, stated ''proposals to change the rescission process should be viewed primarily in terms of their effect on the balance of power between the Congress and the President with respect to discretionary program priorities.'' He went on to say that enhanced rescission authority ''would constitute a major shift of power from the Congress to the President in an area that was reserved to the Congress by the Constitution and historically has been one of clear legislative prerogative.''

Mr. President, once this shift of power to the President takes place, it will not be recovered by the legislative branch. Any bill to take it away from the President will be vetoed summarily and the prospects of overriding such a veto would be practically out of the question.

The moving finger writes; and, having writ,
moves on; nor all your piety nor wit
shall lure it back to cancel half a line,
nor all your tears wash out a word of it.

Senators should think long and hard before they agree to trade the long-term harm that will be done to the structure of our government for the short-term gain that might or might not come from passage of this bill. We

should all stop and think about our Constitution, its system of checks and balances, and the wisdom of the Framers who placed the power of the purse here in this institution. We should all take the time to reread the Constitution, particularly those who may not have done so lately. We should reread it, and think about what that great document says before we agree to hand the type of enhanced rescission authority contained in this conference report over to the executive branch.

Mr. President, press reports tell us that this so-called item veto bill would give the Republicans their biggest legislative achievement of the 104th Congress. What a sad commentary to think that a bill of this quality, surrendering legislative power—the people's power through their elected representatives—and legislative responsibility to the President, and a bill so poorly drafted that we can only guess how it will be implemented, is considered an achievement. I cannot believe that the 104th Congress is so bereft of accomplishment that this bill represents its crowning glory.

Supporters of the item veto bill claim that it gives the President an essential tool in deleting ''wasteful'' federal projects and activities. Let us not deceive ourselves or the voters. There is not the slightest basis in our political history for believing that Presidents are peculiarly endowed by nature to oppose federal spending. Presidents like to spend money. They like proposing expensive new projects and programs, and they like to wield power, especially over the Members of the legislative branch. The national highway system, landing on the Moon, and Star Wars are some of the presidential initiatives.

The joint explanatory statement of the conference committee states that a January 1992 GAO report indicates that a line item veto ''could have a significant impact upon federal spending, concluding that if Presidents had applied this authority to all matters objected to in Statements of Administration Policy on spending bills in the fiscal years 1984 through 1989, spending could have been reduced by a six-year total of about $70 billion.'' The fact is that the Comptroller General later apologized for this report, acknowledging that it had serious deficiencies and that the theoretical figure of $70 billion could not be defended. Actual savings, he said, could have been ''close to zero.'' The Comptroller General even admitted that giving line item veto authority with the President could lead to higher spending, because the administration could use that authority to strike quid pro quos with legislators.

Mr. President, I ask unanimous consent to have this letter to which I have just referred, printed in the RECORD.

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

COMPTROLLER GENERAL
OF THE UNITED STATES,
Washington, DC, July 23, 1992.

Hon. ROBERT C. BYRD,
Chairman, Committee on Appropriations, U.S. Senate.

DEAR MR. CHAIRMAN: This is in response to your recent letter concerning our report on the line item veto.

In reviewing the report and the way it has been interpreted, it is now apparent that we were not sufficiently clear about the purpose of the report or what we judged to be its implications.

Let me emphasize that the analysis was not an attempt to predict what would have happened if the President were granted line item veto or line item reduction authority, only to define the outer limits of potential item veto savings during a particular period as a way of testing the assertion that item veto authority would permit a President to achieve a balanced budget.

Having defined an outer boundary for the possible budgetary savings from a hypothetical line item veto, it necessarily follows that the actual savings from such veto power are likely to have been much less than this. As you suggest in your letter, there are several reasons to believe that this would have been the case:

The President might not have applied the veto to every item to which objections were raised in the Statements of Administration Position (SAPs).

Some vetoes might have been overridden by the Congress.

Some, perhaps all, of the savings resulting from successful item vetoes might have been spent for other purposes which were either acceptable to the President or commanded sufficiently broad support in the Congress to override a veto.

Thus, depending on how the President chose to use the hypothetical item veto power and how the Congress responded, it seems likely that the actual savings could have been substantially less than the maximum and maybe, as you have suggested, close to zero. Indeed, one can conceive of situations in which the net effect of item veto power would be to increase spending. This could be the result, for example, if a President chose to announce his intent to exercise an item veto against programs or projects favored by individual Senators and Representatives as a means of gaining their support for spending programs which would not otherwise have been enacted by the Congress.

We attempted in the report to make it clear that we were developing an estimate of the theoretical maximum potential savings, not a prediction of the likely actual results. We cited the limited empirical evidence as suggesting that the actual use of an item veto would likely produce savings substantially smaller than the theoretical maximum but apparently we were not as clear in this regard as we had thought. We regret the inappropriate highlighting of the $70 billion total amount and the way it was characterized, which undoubtedly contributed to a misleading impression of the purpose and import of our analysis.

Finally, I regret that this report, which was undertaken on our own initiative, was not discussed with you before the assignment was begun and that it was addressed to you without your having been apprised of that intention. I have taken steps to assure that it will not happen again.

Sincerely yours,

CHARLES A. BOWSHER,
Comptroller General
of the United States.

Mr. BYRD. Let us speak plainly. This bill changes the existing process the President uses to rescind, or terminate, appropriated funds. That process takes place after the President signs a bill into law. It does not operate when he is signing a bill, as is the case with the real item veto used by governors. It is a misnomer to call this bill an item veto.

Why do we not talk straight to the American people? Do we think they are unable to understand what we do in Washington, DC? How can we justify using false language and false concepts? This bill has nothing to do with an item veto. It is a change in the rescission process.

This executive attitude of ''We know best'' persists from decade to decade. The President's Economic Report for 1985 includes a discussion about the pros and cons of the item veto. It admits that there is little basis to conclude from the State experience that an item veto would have a substantial effect on Federal expenditures. In fact, it says that ''per capita spending is somewhat higher in States where the Governor has the authority for a line-item veto, even corrected for the major conditions that affect the distribution of spending among States.''

There are other constitutional problems with this bill. First, this bill will have a serious impact on the independence of the Federal judiciary. With enhanced rescission authority the President can delete judicial items, perhaps for punitive reasons. He has no such authority now.

Second, this bill contains a number of legislative vetoes declared unconstitutional by the Supreme Court in the 1983 *Chadha* case. The Court said that whenever Congress wants to alter the rights, duties, and relations outside the legislative branch, it must act through the full legislative process, including bicameralism and presentment of a bill to the President. Congress could not, said the Court, rely on mechanisms short of a public law to control the President or the executive branch. The item veto bill, however, relies on details in the conference report to determine to what extent the President can propose rescissions of budget authority.

Third, this bill enables the President to make law or unmake law without Congress. If Congress fails to respond to the President's rescission proposals within the thirty-day period, his proposals become law. In fact, as soon as the rescission message is submitted to Congress, the President's proposal takes effect. If Congress has to comply with bicameralism and presentment in making law, how can the President make law and unmake law unilaterally?

Constitutional problems in the bill? Proponents say not to worry. Section 3 authorizes expedited review of constitutional challenges. Any member of Congress or any individual adversely affected by the item veto bill may bring an action, in the U.S. District Court for the District of Columbia, for

declaratory judgment and injunctive relief on the ground that a provision violates the Constitution. Any order of the district court shall be reviewable by appeal directly to the Supreme Court. It shall be the duty of both the district court and the Supreme Court to advance on the docket and to expedite to the greatest possible extent the disposition of a case challenging the constitutionality of the item veto bill.

Evidently the authors of this legislation had substantial concern about the constitutionality of their handiwork. A provision for expedited review to resolve constitutional issues is not boilerplate in most bills. You may remember that when we included a provision for expedited review in the Gramm-Rudman-Hollings Act of 1985, the result was a Supreme Court opinion that held that the procedure giving the Comptroller General the power to determine sequestration of funds violated the Constitution.

Why are we trying to pass a bill that raises such serious and substantial constitutional questions? We should be resolving those questions on our own. All of us take an oath of office to support and defend the Constitution. During the process of considering a bill, it is our duty to identify—and correct—constitutional problems. We cannot correct these here because we cannot amend the conference report. It is irresponsible to simply punt to the courts, hoping that the judiciary will somehow catch our mistakes.

As to the first constitutional issue: the impact that this bill might have on the independence of the judiciary. That is what the judges are concerned about, as reported by the New York Times today. Under this legislation, the President can propose rescissions for any type of budget item, regardless of whether it is for the executive, legislative, or judicial branch.

There is no exemption for the judiciary and certainly none for Congress. The President has full latitude to look through any bill and propose that certain funds and tax benefits be cancelled.

The item veto bill would allow the President to rescind funds for all of the judiciary except for the salaries of Article III Justices and judges. Anything else funds for courthouses, staff, expenses, etc. is subject to rescissions. Are these selections to be made solely for economy and ''savings,'' or could they be retaliations for court decisions the executive branch finds disappointing? Probably we would never know, but the appearance of executive punishment for unwelcome decisions would be ever with us.

Given the fact that the executive branch is the most active litigant in federal courts, allowing the President this kind of leverage over the judiciary is improper and unwise. Furthermore, it represents a distinct danger to the independence of the judiciary. The availability of the rescission power, especially under the procedures of this bill, raises a clear issue of separation of powers and has constitutional dimensions.

If the President includes judicial items in a rescission proposal, judges would have to enter the political fray and lobby against the President. This is unseemly, whether the judges lobby openly or behind the scenes. They should not be put in that position, as this bill does.

Judges understand that they have to justify their budgets to Congress like any other agency, legislative or executive. But we have designed the process to protect their independence from the executive branch.

For example, the Budget and Accounting Act of 1921 specifically provided that budgetary estimates for the Supreme Court ''shall be transmitted to the President on or before October 15th of each year, and shall be included by him in the Budget without revision.'' Congress wrote the 1921 statute this way not only for purposes of comity but to respect the coequal status of the judiciary. As the law now stands, in the U.S. Code, budget estimates for the entire judicial branch must be included in the President's budget without change.

Nevertheless, this item veto bill allows the President to reach into appropriations, to reach into conference reports, to reach into the statement of the managers, to reach into the tables and charts, and pick out judicial items for rescission. Last year, in testimony before the joint hearings conducted by the House Committee on Government Reform and Oversight and the Senate Committee on Governmental Affairs, Judge Gilbert S. Merritt testified that it ''seems inconsistent to prohibit the Executive Branch from changing the Judiciary's budget prior to submission, but then to give the President unilateral authority to revise an enacted budget.'' His point is well taken. Certainly it is inconsistent. It cannot be justified.

More recently, the Judicial Conference of the United States has expressed its concern about the application of the item veto bill to judicial funds. It believes that there may be constitutional implications in giving the President this authority and notes that the doctrine of separation of powers recognizes the importance of protecting the judiciary against presidential interference. As the Judicial Conference points out, control of the judiciary's budget rightly belongs to Congress, not the executive branch. In light of the fact that the United States almost operating through the executive branch has more lawsuits in federal court than any other litigant, this rescission authority endangers the integrity and fairness of our federal courts. Judicial decisions should not be affected in any way, however remote, by potential budget actions by the executive branch.

Not only did Congress recognize this fundamental principal in the Budget and Accounting Act, it expressed the same value in legislation enacted in 1939. Although the 1921 statute prohibited the President from altering judicial budget estimates, the judiciary lacked a separate administrative office to prepare and implement its own budget. Oddly, it had to rely on the Department of Justice for this work. It was the Attorney General who prepared and presented to the Bureau of the Budget the estimates for judicial expenses. Several Attorneys General considered it ''anomalous and potentially threatening to the independence of the courts'' for the chief litigant the Department of Justice to have any control over the preparation of judicial budgets.

This anomaly was corrected by legislation in 1939 that created the Administration Office of the United States Courts, with the director appointed by the Supreme Court. The director prepared budget estimates submitted to the Bureau of the Budget and later to the Office of Management and Budget. The legislative history of the 1939 statute highlighted the need to protect the independence and integrity of the courts. In 1937 the Attorney General said that,

> * * * there is something inherently illogical in the present system of having the budget and expenditures of the courts and the individual judges under the jurisdiction of the Department of Justice. The courts should be an independent, coordinate branch of the Government in every proper sense of the term. Accordingly I recommend legislation that would provide for the creation and maintenance of such an administrative system under the control and direction of the Supreme Court.

On January 8, 1938, an article in the Washington Post pointed out that the Federal Government was the chief litigant in the federal courts. While there was no intention on the part of the newspaper ''even to intimate that the Attorney General or his aides would use their power over the purse strings of the judiciary to bring a recalcitrant judge into line,'' the mere fact that the Attorney General ''could do so if he wished constitutes a factor in the relationship between the Justice Department and the courts which should be eliminated.''

During floor debate on the bill creating the Administrative Office of the U.S. Courts, Senator Henry Ashurst, chairman of the Judiciary Committee, came to the same conclusion. ''No one believes,'' he said, ''that either the present Attorney General or the preceding one would use his position to attempt to intimidate any judge; but we know enough about human nature to know that no man, not even a judge, is coldly impersonal and objective with one who holds the purse strings.'' In his testimony last year, Judge Merritt said that during the years between 1921 and 1939 the Budget Bureau had ''refused to pass on requests for new judgeships'' and the Department of Justice ''cut judges' travel funds, eliminated bailiffs, criers and messengers, and reduced

the salaries of secretaries to retired judges by one-half.''

The judiciary should not be subject to the rescission requests made under this item veto bill. If such a bill were to pass, it is crucial to give a full exemption to the judiciary. Exempting the judiciary does not mean that the courts would escape the current pressure for budgetary cutbacks. Judges would still have to present their budget estimates to Congress and defend them. As Judge Merritt noted in his testimony last year, the judiciary's budget requests ''are subjected to full review by the congressional appropriations committees in keeping with the fiscal power conferred on Congress by the Constitution. The Judiciary must justify each dollar it receives. This is appropriate and the Judiciary cheerfully respects this role of Congress.'' Scrutiny of judicial budgets should be in the hands of Congress, not the President.

I turn now to the issue of the legislative veto. This bill gives the President the authority to cancel any dollar amount of discretionary budget authority, any item of new direct spending, and any limited tax benefit. This authority applies to any ''appropriation law,'' defined in the bill to mean any general or special appropriation act, or any act making supplemental, deficiency, or continuing appropriations ''that has been signed into law pursuant to Article I, section 7, of the Constitution of the United States.''

Notice that the enhanced rescission authority applies only to appropriations bills ''signed into law'' by the President. This is a very peculiar feature. If the President vetoes a bill and the veto is overridden, the enhanced rescission authority is not available. Similarly, if the President decides not to sign an appropriations bill and it becomes law after ten days, Sundays excepted, the President may not use the enhanced rescission authority either. You will recall that President Clinton last December allowed the defense appropriations bill to become law without his signature.

Why does the enhanced rescission authority apply only to signed bills? If the goal is to maximize the opportunity for the President to rescind ''wasteful'' funds, why restrict the President this way? What is the purpose? Perhaps we are saying that if the President vetoes a bill and Congress overrides the veto, this second action by Congress should settle the matter. Congress has reaffirmed and reinforced the priorities established in the bill. Those priorities are not to be second-guessed in a rescission action.

Clearly this provision puts some pressure on a President not to exercise his constitutional right of veto which is set forth in section 7 of article I of the Constitution of the United States. If he vetoes and is overridden, the enhanced rescission procedure is not available. I doubt it we have thought through the merits and demerits of discouraging a veto.

The new procedure—this so-called line-item veto, enabling the President to simply cancel items of spending with which he does not agree, will make him, in fact, a super legislator. It will discourage him from using his existing constitutional veto powers to veto an entire bill, and encourage him to try to ''fix'' legislation with which he does not fully agree by canceling only portions of the bill. He will be the lawmaker *sui generis* because his cancellations will in practical effect, be absolute. There will be no recourse—no way to override his cancellations under the convoluted, stack-deck procedures set forth in this conference report.

The temptation to simply do a ''cut and paste'' job on spending bills, thereby foregoing the route of a full Presidential veto of an entire bill which might then be overridden will, it seems to me, be nearly overwhelming. As a result, we will have a President who not only ''proposes,'' but also ''deposes,'' in other words a super lawmaker in the White House circumventing in yet another way the principle of majority rule.

Additionally, such an approach will have the effect of discouraging a President from vetoing a whole bill, and thus through consensus and compromise and negotiations between the two branches, develop a new and better total product which he could then sign.

If the goal of this bill is to allow the President to rescind appropriations for projects and programs he objects to, we all know that appropriations bills contain large lump-sum amounts. We don't put details, or items, in appropriations bills. How does the President reach that level of detail?

The answer is that this bill allows the President to rescind dollar amounts that appear not merely in a bill but also in the conference report and the statement of managers included in the conference report. Here is where the issue of the legislative veto emerges. As defined in this bill, the term dollar amount of discretionary budget authority includes the entire dollar amount of budget authority ''represented separately in any table, chart, or explanatory text included in the statement of managers or the governing committee report accompanying such law.'' The dollar amount of discretionary budget authority also includes the entire dollar amount of budget authority ''represented by the product of the estimated procurement cost and the total quantity of items specified in an appropriation law or included in the statement of managers or the governing committee report accompanying such law.''

In *INS* v. *Chadha* (1983), the Supreme Court ruled that whenever congressional action has the ''purpose and effect of altering the legal rights, duties and relations of persons'' outside the legislative branch, it must act through both Houses in a bill or joint resolution that is presented to the President. In other words, we cannot act by one House or even by both Houses in a concurrent resolution, because a concurrent resolution is not presented to the President. Nor can we act by committee or subcommittee. Anything that has the purpose and effect of altering the legal rights, duties, and relations outside Congress must comply fully bicameralism and presentment.

What of these details and items that appear in a conference report or in the statement of managers? This is a nonstatutory source. It complies with bicameralism but not with presentation. How can it bind the President?

I recognize that proponents of this bill can argue that the conference report and the statement of managers will continue to be nonbinding on the President in the management of these particular laws. To a certain extent that is true. The joint explanatory statement for this bill states: ''The inclusion of subparagraph (A)(ii) is not intended to give increased legal weight of authority to documents that accompany the law that is enacted.'' For example, if Congress in a conference report takes a lump sum of $800 million and breaks it into one hundred discrete projects, the breakdown is nonstatutory and nonbinding with regard to implementing the law. The executive branch may depart from the breakdown over the course of a fiscal year. What is legally binding is the ceiling of $800 million. If the executive branch decides that it would like to shift money from one project to another, it can do that by following established reprogramming procedures. The breakdown, in that sense, is advisory.

But when it comes to submitting the rescission proposals, the breakdown in the conference report and the statement of managers is absolutely binding. If Congress decides to omit the breakdown in the conference report and the statement of managers, the President is limited to the lump sums and aggregates found in the bill signed into law.

It could be argued that any breakdown in the conference report and the statement of managers is a benefit to the President. Itemization creates an opportunity for the President he would not otherwise have. Why should he complain?

The constitutional point I raise is not answered by saying that the procedure might benefit the President. When Congress chose to authorize the Attorney General to suspend the deportation of aliens, subject to a one-House veto, that was a benefit. Without that authority the Attorney General would have to seek a private bill for each threatened alien. But the fact that this procedure constituted a benefit or advantage to the Attorney General, and that the Attorney General was better off with this mechanism than the previous one, did not save the one-House veto. In the *Chadha* case, the Court asked the specific question: did the one-House legislative veto comply with

bicameralism and presentment? Clearly it failed both tests.

Similarly, Presidents sought authority to reorganize the executive branch and accepted the one-House veto that went with this delegation. Reorganization authority offered many benefits to the executive branch. Congress could not amend a presidential reorganization plan and it could not bury it in committee. The presidential plan would become law unless either House disapproved within a specific time period. Distinct and clear advantages to the President, but that did not save the one-House veto. *Chadha* said that this mechanism is unconstitutional for procedural reasons.

That returns us to my central question: Does the use of conference reports and statements of managers constitute an attempt by Congress to control the President short of passing a public law? Is this procedure a forbidden legislative veto? Whether it is a benefit, advantage, or opportunity for the President is irrelevant in answering this constitutional question.

Let me put this another way. Suppose we itemize the $800 million lump sum into a hundred specific projects in the conference report and statement of managers. Suppose further that Congress becomes unhappy with the President's subsequent rescission proposal and decides to retaliate the next year by eliminating all details in the conference report and statement of managers. Now the President is limited to the lump sum of $800 million in the bill. He can live with it or decide to propose the rescission of that full amount. Can any one doubt that Congress, in something that is short of a public law, is controlling the President this time in a negative or restrictive way?

Measure that fact against the explicit language of the Court in the *Chadha* case. In examining the one-House veto over the suspension of deportations, the Court concluded that the congressional action was ''essentially legislative in purpose and effect.'' 462 U.S. at 952. Can anyone doubt that the congressional action in making language in a conference report and statement of managers the explicit guide for presidential rescissions is ''essentially legislative in purpose and effect''?

Moreover, the Court in *Chadha* decided that the disapproval by the House of suspended deportations ''had the purpose and effect of altering the legal rights, duties, and relations of persons'' outside the legislative branch. Again, there can be no uncertainty about the purpose and effect of the conference report and the statement of managers. They have the purpose and effect of altering the legal rights, duties, and relations of the President in submitting rescissions.

Proponents of this bill may claim that it will be beneficial and constructive. We may differ on that score, but there can be no doubt about how the Court will react to such arguments. In *Chadha*, the Court said that ''the fact that a given law or procedure is efficient, convenient, and useful in facilitating the functions of government, standing alone, will not save it if it is contrary to the Constitution.'' 462 U.S. at 944.

The question remains: Does this bill square with the *Chadha* ruling? If it does not, we are being asked to consciously adopt a bill that we know is unconstitutional, whatever merit its proponents may claim for it. All of us are capable of analyzing this issue. If the procedure established in this bill amounts to a legislative veto prohibited by the *Chadha* case, we are violating our oath of office in passing this bill. If enhanced rescission is of value, then we must vote down this bill and insist that its supporters construct an alternative bill that meets the constitutional test. To simply kick this issue to the courts is irresponsible.

It is curious that *Chadha* told Congress that if you want to make law you must follow the entire process, bicameralism and presentment, and yet this bill allows the President to make law and unmake law without any legislative involvement. Under the terms of this conference report, whenever Congress receives the President's special message on rescissions, the ''cancellation of any dollar amount of discretionary budget authority, item of new direct spending, or limited tax benefit shall take effect.'' The cancellation is ''effective'' upon receipt by Congress of the special message notifying Congress of the cancellation. Why is the cancellation ''effective'' before Congress has an opportunity to respond to the President's message? The executive branch may have legitimate reasons to make sure that agencies do not obligate funds that are being proposed for cancellation, but the language in this bill is offensive to the role of Congress in canceling prior law.

Of course the bill gives Congress thirty days to disapprove the President, subject to the President's veto and the need then for a two-thirds majority in each for the override. If Congress does nothing during the thirty day review period, the President's proposals become binding and the laws previously passed and enacted are undone. Through this process the President can make and unmake law without any necessary legislative action. How does that square with the intent and spirit of *Chadha*? Are we to argue that the President can make, or unmake, law singlehandedly and unilaterally, but Congress is compelled to follow the full lawmaking scheme laid out in the Constitution?

I earlier stated that placing details in a conference report and statement of managers violates *Chadha* because this phase of the legislative process is something short of a public law. It should be pointed out that in some legislative vehicles, like continuing resolutions, Congress incorporates by reference phases of the legislative process that are also short of a public law, such as a bill reported by committee or a bill that has passed one chamber. Yet those phases of the legislative process are in a vehicle—continuing resolution—that must pass both Houses and be presented to the President for his signature or veto. These precedents offer no support for the procedure adopted in this bill. The reference to committee report language in the item veto conference report does not comply with *Chadha*.

This is an enormous shift of power to the President but we cannot be sure that the courts will reverse such an abdication. If Congress is unwilling to protect its prerogatives, the courts won't always intervene to do Congress' work for it. As Justice Robert Jackson said in the Steel Seizure Case of 1952: ''I have no illusion that any decision by this Court can keep power in the hands of Congress if it is not wise and timely in meeting its problems. * * * We may say that power to legislate for emergencies belongs in the hands of Congress, but only Congress itself can prevent power from slipping through its fingers.''

On March 2, 1805, Vice President Aaron Burr bid adieu to the Senate, stepping down to make way for the new Vice President, George Clinton, who had been elected to serve during Jefferson's second term. Burr's farewell speech, according to those who heard it, was received with such emotion that Senators were brought to tears and stop their business for a full half hour. It was truly one of the great speeches in the Senate's history: ''This House,'' said Burr that day, ''is a sanctuary; a citadel of law, of order, and of liberty; and it is here—it is here in this exalted refuge; here, if anywhere, will resistance be made to the storms of political phrensy and the silent arts of corruption; and if the Constitution be destined ever to perish by the sacrilegious hands of the demagogue or the usurper, which God avert, its expiring agonies will be witnessed on this Floor.''

I regret to say, Mr. President, that, in my opinion, before this day is done, the ingenious prescience of Aaron Burr will have made itself manifest in the fateful events that will inevitably unfold and which will be witnessed on this Floor.

Philosophers, in their dreams, had constructed ideal governments. Plato had luxuriated in the bliss of his fanciful Republic. Sir Thomas More had taken great satisfaction in the refulgent visions of his Utopia. The immortal Milton had expressed his exalted vision of freedom. Locke has published his elevated thoughts on the two principles of government. But never, until the establishment of American independence and the drafting and ratification of that charter which embodied in it the checks and balances and separation of powers of our own constitutional system, was it ever acknowledged by a people, and made the cornerstone of its government, that the

sovereign power is vested in the masses.

It was just such a noble attachment to a free constitution which raised ancient Rome from the smallest beginnings to the bright summit of happiness and glory to which the Republic arrived, and it was the loss of that noble attachment to a free constitution that plunged her from that summit into the black gulf of indolence, infamy, the loss of liberty, and made her the slave of blood thirsty dictators and tyrannical emperors.

It was then that the Roman Senate lost its independence, and her Senators, forgetful of their honor and dignity, and seduced by base corruption, betrayed their country. Her Praetorian soldiers urged only by the hopes of plunder and luxury, unfeelingly committed the most flagrant enormities, and with relentless fury perpetrated the most cruel murders, whereby the streets of imperial Rome were drenched with her noblest blood. Thus, the empress of the world lost her dominions abroad, and her inhabitants dissolute in their manners, at length became contented slaves, and the pages of her history reveal to this day a monument of the eternal truth that public happiness depends on an unshaken attachment to a free constitution.

And it is this attachment to the Constitution that has preserved the cause of liberty and freedom throughout our land and which today undergirds the noble experiment that never has ceased to inspire mankind throughout all the earth.

The gathered wisdom of a thousand years cries out against this conference report. The history of England for centuries is against this conference report. The declarations of the men who framed our Constitution stand in its way.

Let us resolve that our children will have cause to bless the memory of their fathers, as we have cause to bless the memory of ours.

Let us not have the arrogance to throw away centuries of English history and over 200 years of the American experience for political expediency. No party, Republican or Democrat, is worth the price that this conference report will exact from us and our children. Considering the fact that only about 7 percent of the regular vetoes have been overridden over a period of more than 200 years, it stands to reason that even a much smaller percentage of vetoes of disapproval bills will be overridden—keeping in mind that the presidential vetoes over the period of two centuries have been vetoes of measures which, in the main, have had national significance; the relatively few disapproval bills which will be vetoed under the conference report before the Senate will not likely be measures of national importance but will be of importance to only one or a few states, or perhaps a region at most, and it is very unlikely that the vetoes of disapproval bills will arouse sufficient sentiment in both Houses to produce a two-thirds vote to override. Hence, the President's single act of rescinding an appropriation item will be tantamount to its being stricken from the law.

This is an enormous power for the Legislative Branch to transfer into the hands of any President. The power to rescind will be tantamount to the power to amend, and this conference report will transfer to any President the power to single-handedly amend a measure after it has become law whereas a majority of both Houses is required to amend a bill by striking an item from the bill. The President will be handed the power to strike an item from a law which, if done by action of the Legislative Branch, would require the votes of 51 Senators and 218 members of the House, if all members were in attendance and voting. What an enormous legislative power to place in the hands of any President!

Mr. President, let us learn from the pages of Rome's history. The basic lesson that we should remember for our purposes here is, that when the Roman Senate gave away its control of the purse strings, it gave away its power to check the executive. From that point on, the Senate declined and, as we have seen, it was only a matter of time. Once the mainstay was weakened, the structure crumbled and the Roman republic collapsed.

This lesson is as true today as it was two thousand years ago. Does anyone really imagine that the splendors of our capital city stand or fall with mansions, monuments, buildings, and piles of masonry? These are but bricks and mortar, lifeless things, and their collapse or restoration means little or nothing when measured on the great clock-tower of time.

But the survival of the American constitutional system, the foundation upon which the superstructure of the republic rests, finds its firmest support in the continued preservation of the delicate mechanism of checks and balances, separation of powers, and control of the purse, solemnly instituted by the Founding Fathers. For over two hundred years, from the beginning of the republic to this very hour, it has survived in unbroken continuity. We received it from our fathers. Let us as surely hand it on to our sons and daughters.

Mr. President, I close my reflections with the words of Daniel Webster from his speech in 1832 on the centennial anniversary of George Washington's birthday:

> Other misfortunes may be borne or their effects overcome. If disastrous war should sweep our commerce from the ocean, another generation may renew it. If it exhaust our Treasury, future industry may replenish it. If it desolate and lay waste our fields, still, under a new cultivation, they will grow green again and ripen to future harvests. It were but a trifle even if the walls of yonder Capitol were to crumble, if its lofty pillars should fall, and its gorgeous decorations be all covered by the dust of the valley. All these might be rebuilt. But who shall reconstruct the fabric of demolished government? Who shall rear again the well-proportioned columns of constitutional liberty? Who shall frame together the skillful architecture which unites national sovereignty with State rights, individual security, and public prosperity? No. If these columns fall, they will be raised not again. Like the Colosseum and the Parthenon, they will be destined to a mournful, a melancholy immortality. Bitterer tears, however, will flow over them than were ever shed over the monuments of Roman or Grecian art. For they will be the remnants of a more glorious edifice than Greece or Rome ever saw: the edifice of constitutional American liberty.

Mr. President, I ask unanimous consent to have printed in the RECORD the newspaper article to which I alluded earlier today under the headline of ''Judges' Group Condemns Line-Item Veto Bill''—that is an article from the New York Times—together with a letter addressed to me by Leonidas Ralph Mecham, Secretary of the Judicial Conference of the United States, in which he expresses concern with respect to the conference report before the Senate; an item from the Legal Times, the week of March 25, 1996, entitled ''Points of View: Loosening the Glue of Democracy, the Line-Item Veto Would Discourage Congressional Compromise.'' The article is by Abner J. Mikva, a retired judge who served on the U.S. Court of Appeals for the D.C. Circuit, a former White House counsel for President Clinton, and a former Member of the U.S. House of Representatives. He served as chief judge in the D.C. circuit from 1991 to 1994.

Mr. President, with the permission of the distinguished Senator from New York [Mr. MOYNIHAN], I ask unanimous consent that a letter from Michael Gerhardt, a professor of law at the College of William and Mary, also be printed in the RECORD.

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

[From the New York Times, Mar. 27, 1996]

JUDGES' GROUP CONDEMNS LINE-ITEM VETO BILL

(By Robert Pear)

WASHINGTON, March 26.—The organization that represents Federal judges across the country today denounced a plan developed by Republican leaders of Congress that would allow the President to kill specific items in spending bills.

The organization, the Judicial Conference of the United States, said such authority posed a threat to the independence of the judiciary because a President could put pressure on the courts or retaliate against judges by vetoing items in judicial appropriations bills.

The proposal would shift power to the President from Congress, permitting him to block particular items in a spending bill without having to veto the entire measure. Early last year the House and Senate approved different versions of the proposal, known as a line-item veto. Recently they struck a compromise, which is expected to win approval in both chambers this week. President Clinton supports it.

But any line-item veto bill signed by the President is sure to be challenged in court, and today's criticism from the Judicial Conference suggests that it may get a chilly reception.

Judge Gilbert S. Merritt, chairman of the executive committee of the Judicial Conference, said it was unwise to give the President authority over the judicial budget because the executive branch was the biggest litigant in Federal court, with tens of thousands of cases a year.

The potential for conflict of interest is obvious, said Judge Merritt, who is also chief judge of the United States Court of Appeals for the Sixth Circuit. The court's headquarters are in Cincinnati: Judge Merritt's chambers are in Nashville.

In approving the line-item veto, Congress said it was necessary to curb ''runaway Federal spending.'' But in an interview, Judge Merritt said the inclusion of the judiciary among agencies subject to the line-item veto was ''a rather serious defect'' in the bill.

The line-item veto was a major element of the Republicans' Contract With America and is a top priority of Senator Bob Dole, the majority leader, who has all but clinched the Republican nomination for President. The House passed its version of the line-item veto in February 1995, by a vote of 294 to 134. The Senate approved its version, 69 to 29, in March 1995, with 19 Democrats supporting it.

Under the compromise struck this month, the President could cancel spending for projects listed in tables and charts that accompany a bill, as well as in the bill itself. He could also cancel any new tax break that benefits 100 people or fewer.

Alan B. Morrison, a lawyer at the Public Citizen Litigation Group who has successfully challenged several unconventional lawmaking procedures, said: ''In my view, this bill is unconstitutional. It certainly will be challenged in court.''

Mr. Morrison said the line-item veto trampled on the procedure set forth in the Constitution for making law. Under that procedure, he said, the President may veto whole bills but not pieces of a bill.

In recent weeks, the decisions of several Federal judges have been harshly criticized by the White House and Republican candidates for President. Judges said such criticism highlighted the need for judicial independence.

''Judges were given life tenure to be a barrier against the winds of temporary public opinion,'' said Judge Merritt. ''If we didn't have judicial independence, I'm not sure we could maintain free speech and other constitutional liberties that we take for granted.''

In a letter to Congress, L. Ralph Mecham, secretary of the Judicial Conference, said: ''The doctrine of separation of powers recognizes the vital importance of protecting the judiciary against interference from any President. This protection needs to endure. Control of the judiciary's budget rightly belongs to the Congress and not the executive branch.''

Judge Richard S. Arnold, chairmen of the budget committee of the Judicial Conference, said in an interview: ''We don't have any qualms about this particular President, but institutionally we have reservations about providing any President with a weapon that could, in the wrong hands, be used to retaliate against the courts for deciding cases against the Federal Government.''

Judge Arnold, a longtime friend of Mr. Clinton, is chief judge of the United States Court of Appeals for the Eighth Circuit, which has its headquarters in St. Louis. Judge Arnold sits in Little Rock, Ark.

The Federal judiciary has a budget of $3 billion a year, accounting for two-tenths of 1 percent of the $1.5 trillion spent last year by the Federal Government. Congress may not reduce the salary of a sitting Federal judge, but may cut the budget for court clerks, secretaries, probation officers and security officers, as well as for judicial travel.

In the interview today, Judge Merritt described the judges' concern about the line-item veto this way: ''If for some reason the President, whoever he may be, is irritated about something the judiciary has done, he could excise the appropriation for a particular court or a particular judicial function.''

JUDICIAL CONFERENCE
OF THE UNITED STATES,
Washington, DC, March 21, 1996.

Hon. ROBERT C. BYRD,
Ranking Minority Member, Committee on Appropriations, U.S. Senate, Senate Hart Office Building, Washington, DC.

DEAR SENATOR BYRD: I understand an agreement has been reached between Republican negotiators on ''line-item veto'' legislation. Although we have not seen a draft of the agreement to determine the extent to which the Judiciary might be affected, I did not want to delay communicating with you. The Judiciary had concerns over some previous versions of the legislation that were considered by the House and Senate. These concerns could also apply to the version on which agreement was just reached, depending on how it is drafted.

The Judiciary believes there may be constitutional implications if the President is given independent authority to make line-item vetoes of its appropriations acts. The doctrine of separation of powers recognizes the vital important of protecting the Judiciary against interference from any President.

Protection of the Judiciary by Congress against Presidential power and potential intervention is also evident in the Budget and Accounting Act of 1921, which ensures that the financial affairs of the Judiciary be insulated from political influence by the President and his staff. Prior to this Act, the Judiciary's budget was controlled by the Executive Branch. Now, by law, requests for judicial branch appropriations must be submitted to the President by the Judiciary, but must by transmitted by him to Congress ''without change''.

This protection needs to endure. Control of the Judiciary's budget rightly belongs to the Congress and not the Executive Branch, particularly in light of the fact that the United States, almost always through the Executive Branch, has more lawsuits in the Federal courts than any other litigant. The integrity and fairness of our Federal Courts should not be endangered by the potential of Executive Branch political influence.

In whatever agreement is ultimately reached by the conference committee, on behalf of the Judicial Conference of the United States, I urge that the independence of the Third Branch of Government be preserved.

I appreciate your consideration and we stand ready to assist you in any way necessary.

Sincerely,

LEONIDAS RALPH MECHAM,
Secretary.

[From the Legal Times, Mar. 25, 1996]

LOOSENING THE GLUE OF DEMOCRACY

(By Abner J. Mikva)

There is a certain hardiness to the idea of a line-item veto that causes it to keep coming back. Presidents, of course, have always wanted it because the line-item veto represents a substantial transfer of power from the legislative branch to the executive branch. Government purists favor the idea because the current appropriations process—whereby all kinds of disparate expenditures are wrapped or ''bundled'' into one bill so that the president must either swallow the whole thing or veto the whole thing—is very messy and wasteful. Reformers generally urge such a change because anything that curtails the power of Congress to spend has to be good.

My bias against the unbundling of appropriations and other legislative proposals has changed over the years. When I first saw the appropriations process, back in the Illinois legislature, it seemed the height of irresponsibility to bundle dozens of purposes into a single bill. It also seemed unconstitutional since the Illinois Constitution had a ''single purpose'' clause, under which bills considered by the legislature were to contain only one subject matter. But the ''single purpose'' clause had been observed in the breach for many years by the time I was elected in 1956.

I first saw the bundling process work when a single bill, presented for final passage, appropriated money for both the Fair Employment Practices Commission and a host of other commissions, including one to provide services for Spanish-American War veterans (there were two left in the state at the time) and one to study the size of mosquitoes that inhabited the downstate portions of Illinois. If I wanted to vote for the FEPC, I had to swallow all those other commissions, which I thought were wasteful. So I invoked the constitutional clause. to my dismay, the legislature favored all the other commissions on separate votes, but the FEPC went down to defeat. That is how I learned that there are some pluses to the bundling process.

Bundling is very asymmetrical in effect and probably wasteful. But it is also a legislative device that allows various coalitions to form and thus moves the legislative process forward.

Consider South America, where regional rivalries and resentments in many countries make governing very difficult. The inability to form the political coalitions that are normal in this country creates enormous pressure on the central government. This pressure is certainly one of the causes of the mini-revolts that perpetually arise. The have-nots feel excluded from the process, while the majority for the military regime) exercise their power without taking care of the depressed areas of the country.

It is more difficult to ignore the have-notes in the United States. First of all, members of Congress are elected as representatives of geographic areas, rather than as representatives of parties. Woe betide the congressman who starts thinking too much like a national legislator and forgets the parochial interests of his constituents.

Second, the separate elections of the president and Congress creates the necessity for the two branches to cooperate in setting spending priorities. Floating coalitions that take into account the needs of all the sections and groups in the country become essential. When urban interests wanted to promote a food program for the cities, for example, They formed a coalition with agricultural interests, and food stamps were joined with farm subsidies.

It is true that bundling encourages the merger of bad ideas with good ideas, and diminishes the ability of the president to undo the package. A line-item veto, which would allow the president to veto any single piece of an appropriations bill (or, under some proposals, reject disparate pieces of any other bill), makes the whole process more rational.

But it also makes it harder to find the glue that holds the disparate parts of our country together. City people usually don't care about dams and farm policy. Their rural cousin don't think much about mass transportation or urban renewal or housing policy. If the two groups of representatives don't have anything to bargain about, it is unlikely that either set of concerns will receive appropriate attention.

The other downside to the line-item veto is exactly the reason why almost all presidents

want the change and why, up to now, most Congresses have resisted the idea. The line-item veto transfers an enormous amount of power from Congress to the president. For those of us who think that the executive branch is strong enough, and that an imperial presidency is more of a threat than an overpowering Congress, the current balance of power is just right.

That has been the gist of Sen. Robert Byrd's opposition to the line-item veto. The West Virginia Democrat has argued that the appropriations power, the power of the purse, is the only real power that Congress has and that the line-item veto would diminish that power substantially. So far, he has prevailed—although last year, the reason he prevailed had more to do with the Republicans' unwillingness to give such a powerful tool to President Bill Clinton.

But now the political dynamics have changed. The Republicans in Congress can fashion a line-item veto that will not benefit the incumbent president—unless he gets relected—and their probable presidential candidate, Senate Majority Leader Robert Dole, has recently made clear that he wants this passed. Chances for the line-item veto are vastly greater.

There are some constitutional problems in creating such a procedure. The wording of the Constitution suggests pretty strongly that a bill is presented to the president for his signature or veto in its entirety. It will take some creative legislating to overcome such a ''Technicality.'' I reluctantly advised the president last year that it was possible to draft a line-item veto law that would pass constitutional muster. The draft proposal involved a Rube Goldberg plan that ''pretended'' that the omnibus appropriations legislation passed by Congress and presented to the president actually consists of separate bills for various purposes. This pretense was effectuated by putting language in legislation to that effect.

President Clinton was not then asking for my policy views, and I did not have to reconcile my advice with my policy bias toward the first branch of government—Congress. But I was uneasy enough to become more sympathetic to the late Justice Robert Jackson's handling of a similar dilemma in one of the Supreme Court opinions. He acknowledged his apostasy concerning an issue on which he had opined to the contrary during his tenure as attorney general. Quoting another, Justice Jackson wrote, ''The matter does not appear to me now as it appears to have appeared to me then.''

My apostasy was less public. My memo to the president was only an internal document, and I didn't have to tell him how I felt about the line-item veto. But now that I have no representational responsibilities, I prefer to stand with Sen. Byrd.

THE COLLEGE OF WILLIAM & MARY,
SCHOOL OF LAW.
Williamsburg, VA, March 27, 1996.

Hon. DANIEL PATRICK MOYNIHAN,
U.S. Senate,
Washington, DC.

DEAR SENATOR MOYNIHAN: I appreciate the chance to share with you my opinion on the constitutionality of the Line Item Veto Act of 1996, as set forth in the Conference Report, dated March 4, 1996 (hereinafter ''the Republican draft'' or ''the Conference Report''). In this letter, I focus only on a few of the more serious problems with the Republican Draft and do not purport to analyze exhaustively its constitutionality. Even no, I am of the view that, given just the few significant flaws in the Conference Report that I identify and explain below, its constitutionality is plainly doomed.

Describing how the law works is crucial for identifying and understanding the constitutional and practical problems posed by some of its major provisions. As I read it, the critical delegation made by the Republican draft to the President is the authority to ''cancel'' all or any part of ''discretionary budget authority,'' ''any item of direct spending,'' or ''any targeted tax benefit.'' Presumably, a presidential cancellation pursuant to the act has the effect of nullifying a portion of a budgetary or appropriations bill unless a majority of each chamber of Congress agrees within a specific time period to pass a ''disapproval bill'' specifying it intention to reauthorize the particular item cancelled by the President. The President may veto the disapproval bill, which can then become law only if two-thirds of each chamber of Congress agree to override his veto.

In my opinion, there are three fatal constitutional problems with the procedures outlined above. First, the law effectively allows any portion of a bill enacted by Congress that the President signs into law but does not cancel to become law, in spite of the fact that Congress will have never voted on it as such. This kind of lawmaking by the President clearly violates Article I, section 1, which grants ''[a]ll legislative powers'' to Congress, and Article I, section 7, which grants to Congress alone the discretion to package bills as it sees fit.

Article I states further that the President's veto power applies to ''every Bill . . ., Every Order, Resolution or Veto to which the Concurrence of the Senate and House of Representatives may be necessary.''[1] This means the President may wield his veto on the legislative product only, as Harvard Law Professor Laurence Tribe maintains in his treatise, ''in the form in which Congress has chosen to send it to the White House: be the bill small or large, its concerns focused or diffuse, its form particular or omnibus, the President must accept or reject the entire thing, swallowing the bitter with the sweet.''[2] Tribe's subsequent change of position is of no consequence, because he was right in his initial understanding of the constitutional dynamics of a statutorily created line-item veto mechanism. The fact that the President has signed the law as enacted is irrelevant, because a law is valid only if it takes effect in the precise configuration approved by the Congress. The President does not have the authority to put into effect as a law only part of what Congress has passed as such. The particular form a bill should have as a law is, as the Supreme Court has said, the ''kind of decision that can be implemented only in accordance with the procedures set out in Article I.''[3]

The Conference Report would enable the President to make affirmative budgetary choices that the framers definitely wanted to preclude him from making. The framers deliberately chose to place the power of the purse outside of the executive because they feared the consequences of centralizing the powers of the purse and the sword. As James Madison wrote in the Federalist No. 58, ''This power of the purse may, in fact, be regarded as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people.''[4] Every Congress (until perhaps this most recent one)—as well as all of the early presidents, for that matter—has shared the understandings that only the Congress has the authority to decide how to package legislation, that this authority is a crucial component of checks and balances, and that the President's veto authority is strictly a negative power that enables him to strike down but not to rewrite whatever a majority of Congress has sent to him as a bill.

The wisdom of leaving the power of the purse in Congress, as the framers desired as a means of checking the executive, is buttressed by the recognition that pork barrel appropriations—the evil sought to be eliminated by the Republican draft—are just unattractive examples of legislating for diverse interests, which is the very stuff of representative government. Apportioning the public fisc in a large and diverse nation requires degrees of coordination and compromise that the framers left to the initial discretion of Congress to be undone only as specified in Article I.

The second constitutional defect with the Conference Report's basic procedures involves the legitimacy of the cancelling authority given to the President. Proponents of this cancellation power defend it as a legitimate delegation of congressional authority to the President; however, this argument rests on a misunderstanding of the relevant constitutional doctrine. This misunderstanding is reflected in the CRS Report, which claims erroneously that ''while the [Supreme] Court has used a balancing test in some separation of powers cases, it has never chosen to do so in delegation cases.''[5] The latter assertion is simply wrong.

In fact, the Supreme Court has issued two lines of cases on congressional delegations. The first, which is not implicated by the Conference Report, involves delegations from Congress to administrative agencies or inferior bodies. The Court tends to evaluate such delegations under a ''functionalist'' approach to separation of powers under which the Court balances the competing concerns or interests at stake to ensure that the core function of a branch is not frustrated. For example, the Court used this approach in *Morrison* v. *Olson*[6] to uphold the Independent Counsel Act in which the Congress had delegated the executive function of criminal prosecution to an individual not formally associated with any of the three branches. Similarly, in *Mistretta* v. *United States,*[7] the Court upheld the constitutionality of the composition and lawmaking function of the United States Sentencing Commission, at least three of whose members are required by statute to be lower court judges and to which the Congress delegated the authorities to promulgate, review, and revise sentence-determinative guidelines.

The Republican Draft clearly violates, however, the second line of Supreme Court decisions on congressional delegations. These cases involve delegations from Congress to the titular head of a branch, such as one of its chambers or the President. In these cases, the Court has not used a balancing test; rather, the Court has used a ''formalist'' approach that treats the Constitution as granting to each branch distinct powers and setting forth the maximum degree to which the branches may share those powers. A formalist approach to separation of powers treats the text of the Constitution and the intent of its drafters as controlling and changed circumstances and broader policy outcomes as irrelevant to constitutional outcomes. In recent years, the Court has used this approach to strike down the legislative veto in *Chadha* because it would have allowed one House to take legislative action without complying with the procedures set forth in Article I; to hold in *Bowsher* v. *Synar*[8] that Congress may not delegate executive budgetary functions to an official over whom Congress has removal power; and to strike down in *Washington Airports Authority* v. *Citizens for the Abatement of Aircraft Noise*[9] the creation of a Board of Review partially composed of members of Congress with executive veto-like power over the decisions of the directors of the Metropolitan Washington Airports Authority.

Footnotes at end of letter.

Undoubtedly, the Court would follow a formalist approach in striking down the Republican draft. For one thing, the Court would not be able to escape applying the logic of *Bowsher* v. *Synar* to the proposed law. Whereas the crucial problem *Bowsher* was Congress' attempt to authorize the exercise of certain executive authority by a legislative agent—the Comptroller General, here the problem is that the President would plainly be exercising what everyone agrees is legislative authority—the discretion to determine the particular configuration of a bill that will become law. Even the law's proponent's admit it allows the President to exercise legislative authority, albeit in their view delegated to him by Congress.

Formalist analysis would be appropriate in evaluating such a delegation's constitutionality because it would be the kind about which the framers were most concerned; the checks and balances set forth in the Constitution deal directly with how the titular heads of each branch should interrelate. Hence, the Court has opted for a formalist approach to deal with delegations between the branches at their respective apexes to preclude one branch from aggrandizing itself at the expense of another. The Conference Report would clearly undermine the balance of power between the branches at the top, because it would eliminate the Congress's primacy in the budget area and would unravel the framers' considered judgment to restrict the President's role in the lawmaking process to a qualified negative rather than to have him exercise an affirmative power to redraft or reconfigure a bill.

Even if the Court used a functionalist approach to evaluate the constitutionality of the Republican draft, it would strike down the proposed law. The reason is that the law establishes an uneven playing field for the President and Congress on budgetary matters. In so doing, it profoundly alters the balance of power set forth in the Constitution. As Professor Tribe recognizes further in his treatise, such a scheme ''would enable the President to nullify new congressional sending initiatives and priorities as well as to wipe out previously enacted programs that receive their funding through the annual appropriations process. Congress, which the Constitution makes the master of the public purse, would be demoted to the role of giving fiscal advice that the President would be effectively free to disregard.[10] Once again Tribe's subsequent change of position does not undermine the soundness of his initial reasoning, for the historical record is clear that the framers, as Tribe has recognized himself, never intended nor tried to grant the President any ''special veto power over appropriation bills, despite their awareness that the insistence of colonial assemblies that their spending bills could not be amended once they had passed the lower house had greatly enhanced the growth of legislative power.[11]

An example should illustrate the problematic features of the proposed cancellation mechanism. Suppose that 55% of Congress passes a law, including expenditures for a new Veterans Administration hospital in New York. The President decides he would prefer for Congress not to spend any federal money on this project, so, after signing the bill into law, he exercises his authority to cancel the allocations made for the new facility. Again 55% of the Congress agrees to make this expenditure but this time through the passage of a disapproval bill. The President vetoes the latter, and Congress fails to override his veto, with only 55% of Congress (yet again) voting for the appropriation. The net effect is that the President would get to refuse to spend money 55% of the Congress will have thrice said it wanted to spend. Thus, the Conference Report would require Congress to vote as many as three separate times to fund something while assuming in the process an increasingly defensive posture vis-a-vis the President. In other words, the Republican draft allows the President to force Congress to go through two majority votes—the second of which is much more difficult to attain because it would have to be in favor of a specific expenditure that is now severed from the other items of the compromise giving rise to its inclusion in the first place—and one supermajority vote in order to put into law a particular expenditure.

A third constitutional problem with the Conference Report involves the constraints it tries to place on the President's cancellation authority. The latter if for all intents and purposes a veto. It has the effect of a veto because it forces Congress in the midst of the lawmaking process into repassing something as a bill that ultimately must carry a supermajority of each chamber in order to become law. Nevertheless, the Conference Report attempts to constrain the reasons the President may have for cancelling some part of a budget or appropriations bill. Just as Congress lacks the authority through legislation to enhance presidential authority in the lawmaking process by empowering him to reconfigure what Congress has passed as a bill into some other form prior to its becoming a law, Congress lacks the authority to restrict presidential authority by limiting the grounds a president may consider as appropriate for vetoing something.

Even apart from whatever constitutional problems the Conference Report may have, it poses two serious practical problems. First, the possibility for substantial judicial review of presidential or congressional compliance with the Republican draft is quite high. For example, it seems likely that lawsuits could be brought challenging whether the President has appropriately considered, as the act directs, such things as ''the legislative history'' or ''any specific sources of information referenced in such law or, in the absence of specific sources of information, the best available information'' or ''the specific definitions contained'' within it. At the very least, the bill requires that the President make some showing that he has done these things to the satisfaction of members of Congress (or at least those disposed to bring a lawsuit in the absence of such a showing). There are also numerous procedures OMB and each house of Congress must follow that, presumably, could become the basis for judicial challenge if not done completely to the satisfaction of partisan foes in the other branch. In addition, there may be some questions as whether the President has in fact complied with Congress' or the Republican draft's understanding of the kinds of items he may cancel, such as a ''targeted tax benefit.''

The likely prospect of substantial judicial interference with the budgetary process is unsettling. The framers deliberately excluded the unelected federal judiciary from exercising any kind of decisive role in budgetary negotiations or deliberations. The Republican draft does not ensure that this exclusion will always be honored. The framers wanted all of the key decisionmakers within budget negotiations to be politically accountable; any budgetary impasse between the President and Congress that the federal courts help to resolve in favor of one or the other will simply diminish even further the public's confidence that the political process is the place to turn for answers to such deadlocks.

Another practical difficulty is with the authorization made by the Republican draft to the Joint Committee on Taxation to render an official opinion, which may become a part of a budgetary or appropriations measure, on whether it ''contains any targeted tax benefit.'' The bill precludes the House or the Senate from taking issue with the judgment of the Joint Committee's finding. As a practical matter, this empowers a small number of members of Congress to impose their will on the whole body. Although this might have the salutary effect of expediting the passage of the covered legislation, it forces those members of Congress who disagree with the Joint Committee to express their disagreement only by voting down rather than by trying to amend a bill that they otherwise would support.

In summary, I believe that the Republican draft conflicts with the plain language, structure, and traditional understanding of the lawmaking procedure set forth in Article I; relevant Supreme Court doctrine; and the delicate balance of power between Congress and the President on budget matters. I am confident that the Supreme Court ultimately would strike the bill down if it were passed by Congress and signed into law by the President.

It has been a privilege for me to share my opinions about the Conference Report with you. If you have any other questions or need any further analysis, please do not hesitate to let me know.

Very truly yours,

MICHAEL J. GERHARDT,
Professor of Law.

FOOTNOTES

[1] U.S. Const. art. I, section 7, cls. 2, 3.
[2] Laurence Tribe, American Constitutional Law 265 (2d ed. 1988).
[3] *I.N.S.* v. *Chadha*, 462 U.S. 919, 954 (1982).
[4] The Federalist No. 58 at 300 (J. Madison) (M. Beloff ed. 1987).
[5] Congressional Research Service, Memorandum Regarding Constitutional Questions Respecting Bill to Grant President Enhanced Rescission Authority over Appropriations and Targeted Tax Benefits, at 16 (January 9, 1995).
[6] 487 U.S. 654, 693 (1988).
[7] 488 U.S. 361 (1989).
[8] 111 U.S. 714 (1986).
[9] 478 S. Ct. 2298 (1991).
[10] L. Tribe, *supra* note 2, at 267 (footnotes omitted).
[11] *Id.* at 267 (citing Note, ''Is a Presidential Item Veto Constitutional?'' 96 Yale L.J. 838, 841–44 (1987)).

MOTION TO RECOMMIT

Mr. BYRD. Mr. President, I send to the desk a motion to recommit the conference report.

The PRESIDING OFFICER (Mr. THOMAS). The clerk will report the motion.

The legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD] moves to recommit the conference report on bill S. 4 to the committee of conference with instructions to the managers on the part of the Senate to disagree to the conference substitute recommended by the committee of conference.

Mr. BYRD. Mr. President, I ask unanimous consent further reading of the motion be dispensed with.

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

The motion is as follows:

Motion to recommit conference report on the bill S. 4 to the committee of conference with instructions to the managers on the part of the Senate to disagree to the conference substitute recommended by the committee of conference and insist on inserting the text of S. 14 as introduced in the Senate on January 4, 1995 (with certain exceptions) which is as follows:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Legislative Line Item Veto Act''.

SEC. 2. EXPEDITED CONSIDERATION OF CERTAIN PROPOSED RESCISSIONS AND REPEALS OF TAX EXPENDITURES AND DIRECT SPENDING.

(a) IN GENERAL.—Title X of the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 621 et seq.) is amended by adding after section 1012 the following new section:

''EXPEDITED CONSIDERATION OF CERTAIN PROPOSED RESCISSIONS AND REPEALS OF TAX EXPENDITURES AND DIRECT SPENDING

''SEC. 1012A. (a) PROPOSED CANCELLATION OF BUDGET ITEM.—The President may propose, at the time and in the manner provided in subsection (b), the cancellation of any budget item provided in any Act.

''(b) TRANSMITTAL OF SPECIAL MESSAGE.—

''(1)(A) Subject to the time limitations provided in subparagraph (B), the President may transmit to Congress a special message proposing to cancel budget items and include with that special message a draft bill that, if enacted, would only cancel those budget items as provided in this section. The bill shall clearly identify each budget item that is proposed to be canceled including, where applicable, each program, project, or activity to which the budget item relates. The bill shall specify the amount, if any, of each budget item that the President designates for deficit reduction as provided in paragraph (4).

''(B) A special message may be transmitted under this section—

''(i) during the 20-calendar-day period (excluding Saturdays, Sundays, and legal holidays) commencing on the day after the date of enactment of the provision proposed to be rescinded or repealed; or

''(ii) at the same time as the President's budget.

''(2) In the case of an Act that includes budget items within the jurisdiction of more than one committee of a House, the President in proposing to cancel such budget item under this section shall send a separate special message and accompanying draft bill for each such committee.

''(3) Each special message shall specify, with respect to the budget item proposed to be canceled—

''(A) the amount that the President proposes be canceled;

''(B) any account, department, or establishment of the Government to which such budget item is available for obligation, and the specific project or governmental functions involved;

''(C) the reasons why the budget item should be canceled;

''(D) to the maximum extent practicable, the estimated fiscal, economic, and budgetary effect (including the effect on outlays and receipts in each fiscal year) of the proposed cancellation; and

''(E) all facts, circumstances, and considerations relating to or bearing upon the proposed cancellation and the decision to effect the proposed cancellation, and to the maximum extent practicable, the estimated effect of the proposed cancellation upon the objects, purposes, and programs for which the budget item is provided.

''(4)(A) Not later than 5 days after the date of enactment of a bill containing an amount designated by the President for deficit reduction under paragraph (1), the President shall—

''(i) with respect to a rescission bill, reduce the discretionary spending limits under section 601 of the Congressional Budget Act of 1974 for the budget year and each outyear to reflect such amount; and

''(ii) with respect to a repeal of a tax expenditure or direct spending, adjust the balances for the budget year and each outyear under section 252(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 to reflect such amount.

''(B) Not later than 5 days after the date of enactment of a bill containing an amount designated by the President for deficit reduction under paragraph (1), the chairs of the Committees on the Budget of the Senate and the House of Representatives shall revise levels under section 311(a) and adjust the committee allocations under section 602(a) to reflect such amount.

''(c) PROCEDURES FOR EXPEDITED CONSIDERATION.—

''(1)(A) Before the close of the second day of session of the Senate and the House of Representatives, respectively, after the date of receipt of a special message transmitted to Congress under subsection (b), the majority leader or minority leader of each House shall introduce (by request) the draft bill accompanying that special message. If the bill is not introduced as provided in the preceding sentence in either House, then, on the third day of session of that House after the date of receipt of that special message, any Member of that House may introduce the bill.

''(B) The bill shall be referred to the appropriate committee or (in the House of Representatives) committees. The committee shall report the bill without substantive revision and with or without recommendation. The committee shall report the bill not later than the seventh day of session of that House after the date of receipt of that special message. If the committee fails to report the bill within that period, the committee shall be automatically discharged from consideration of the bill, and the bill shall be placed on the appropriate calendar.

''(C) A vote on final passage of the bill shall be taken in the Senate and the House of Representatives on or before the close of the 10th day of session of that House after the date of the introduction of the bill in that House. If the bill is passed, the Clerk of the Senate or the House of Representatives, as the case may be, shall cause the bill to be engrossed, certified, and transmitted to the other House within one calendar day of the day on which the bill is passed.

''(2)(A) During consideration under this subsection in the House of Representatives, any Member of the House of Representatives may move to strike any proposed cancellation of a budget item.

''(B) A motion in the House of Representatives to proceed to the consideration of a bill under this subsection shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

''(C) Debate in the House of Representatives on a bill under this subsection shall not exceed 4 hours, which shall be divided equally between those favoring and those opposing the bill. A motion further to limit debate shall not be debatable. It shall not be in order to move to recommit a bill under this subsection or to move to reconsider the vote by which the bill is agreed to or disagreed to.

''(D) Appeals from decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to a bill under this section shall be decided without debate.

''(E) Except to the extent specifically provided in this section, consideration of a bill under this section shall be governed by the Rules of the House of Representatives. It shall not be in order in the House of Representatives to consider any rescission bill introduced pursuant to the provisions of this section under a suspension of the rules or under a special rule.

''(3)(A) During consideration of a bill under this subsection in the Senate, any Member of the Senate may move to strike any proposed cancellation of a budget item.

''(B) It shall not be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

''(C) Debate in the Senate on a bill under this subsection, and all debatable motions and appeals in connection therewith (including debate pursuant to subparagraph (D)), shall not exceed 10 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

''(D) Debate in the Senate on any debatable motion or appeal in connection with a bill under this subsection shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover and the manager of the bill, except that in the event the manager of the bill is in favor of any such motion or appeal, the time in opposition thereto, shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from time under their control on the passage of a bill, allot additional time to any Senator during the consideration of any debatable motion or appeal.

''(E) A motion in the Senate to further limit debate on a bill under this subsection is not debatable. A motion to recommit a bill under this subsection is not in order.

''(F) If the Senate proceeds to consider a bill introduced in the House of Representatives under paragraph (1)(A), then any Senator may offer as an amendment the text of the companion bill introduced in the Senate under paragraph (1)(A) as amended if amended (under subparagraph (A)). Debate in the Senate on such bill introduced in the House of Representatives, and all debatable motions and appeals in connection therewith (including debate pursuant to subparagraph (D)), and any amendment offered under this subparagraph, shall not exceed 10 hours minus such times (if any) as Senators consumed or yielded back during consideration of the companion bill introduced in the Senate under paragraph (1)(A).

''(4) Debate in the House of Representatives or the Senate on the conference report on any bill considered under this section shall be limited to not more than 2 hours, which shall be divided equally between the majority leader and the minority leader. A motion further to limit debate is not debatable. A motion to recommit the conference report is not in order, and it is not in order to move to reconsider the vote by which the conference report is agreed to or disagreed to.

''(d) AMENDMENTS AND DIVISIONS PROHIBITED.—Except as otherwise provided by this section, no amendment to a bill considered under this section shall be in order in either the Senate or the House of Representatives. It shall not be in order to demand a division of the question in the House of Representatives (or in a Committee of the Whole). No motion to suspend the application of this subsection shall be in order in the House of Representatives, nor shall it be in order in the House of Representatives to suspend the application of this subsection by unanimous consent.

''(e) TEMPORARY PRESIDENTIAL AUTHORITY TO RESCIND.—At the same time as the President transmits to Congress a special message proposing to rescind budget authority, the President may direct that any budget authority proposed to be rescinded in that special message shall not be made available for obligation for a period not to exceed 45 calendar days from the date the President transmits the special message to Congress.

''(f) DEFINITIONS.—For purposes of this section—

''(1) the term 'appropriation Act' means any general or special appropriation Act, and any Act or joint resolution making supplemental, deficiency, or continuing appropriations;

''(2) the term 'direct spending' shall have the same meaning given such term in section 250(c)(8) of the Balanced Budget and Emergency Deficit Control Act of 1985;

''(3) the term 'budget item' means—

''(A) an amount, in whole or in part, of budget authority provided in an appropriation Act;

''(B) an amount of direct spending; or

''(C) a targeted tax benefit;

''(4) the term 'cancellation of a budget item' means—

''(A) the rescission of any budget authority provided in an appropriation Act;

''(B) the repeal of any amount of direct spending; or

''(C) the repeal of any targeted tax benefit; and

''(5) the term 'targeted tax benefit' means any provision which has the practical effect of providing a benefit in the form of a different treatment to a particular taxpayer or a limited class of taxpayers, whether or not such provision is limited by its terms to a particular taxpayer or a class of taxpayers. Such term does not include any benefit provided to a class of taxpayers distinguished on the basis of general demographic conditions such as income, number of dependents, or marital status.''.

(b) EXERCISE OF RULEMAKING POWERS.—Section 904 of the Congressional Budget Act of 1974 (2 U.S.C. 621 note) is amended—

(1) in subsection (a), by striking ''and 1017'' and inserting ''1012A, and 1017''; and

(2) in subsection (d), by striking ''section 1017'' and inserting ''sections 1012A and 1017''.

(c) CLERICAL AMENDMENTS.—The table of sections for subpart B of title X of the Congressional Budget and Impoundment Control Act of 1974 is amended by inserting after the item relating to section 1012 the following:

''Sec. 1012A. Expedited consideration of certain proposed rescissions and repeals of tax expenditures and direct spending.''.

(d) EFFECTIVE PERIOD.—The amendments made by this Act shall—

(1) take effect on the date of enactment of this Act;

(2) apply only to budget items provided in Acts enacted on or after the date of enactment of this Act; and

(3) cease to be effective on September 30, 2002.

Mr. BYRD. Mr. President, I ask for the yeas and nays on the motion.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. DOMENICI. Mr. President, were the yeas and nays ordered?

The PRESIDING OFFICER. The yeas and nays have been ordered, yes.

AMENDMENT NO. 3665 TO MOTION TO RECOMMIT

Mr. BYRD. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD] proposes an amendment numbered 3665.

Mr. BYRD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

In lieu of the instructions insert the following: ''with instructions to the managers on the part of the Senate to disagree to the conference substitute recommended by the committee of conference and insist on inserting the text of S. 14 as introduced in the Senate on January 4, 1995 (with certain exceptions) which is as follows:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Legislative Line Item Veto Act''.

SEC. 2. EXPEDITED CONSIDERATION OF CERTAIN PROPOSED RESCISSIONS AND REPEALS OF TAX EXPENDITURES AND DIRECT SPENDING.

(a) IN GENERAL.—Title X of the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 621 et seq.) is amended by adding after section 1012 the following new section:

''EXPEDITED CONSIDERATION OF CERTAIN PROPOSED RESCISSIONS AND REPEALS OF TAX EXPENDITURES AND DIRECT SPENDING

''SEC. 1012A. (a) PROPOSED CANCELLATION OF BUDGET ITEM.—The President may propose, at the time and in the manner provided in subsection (b), the cancellation of any budget item provided in any Act.

''(b) TRANSMITTAL OF SPECIAL MESSAGE.—

''(1)(A) Subject to the time limitations provided in subparagraph (B), the President may transmit to Congress a special message proposing to cancel budget items and include with that special message a draft bill that, if enacted, would only cancel those budget items as provided in this section. The bill shall clearly identify each budget item that is proposed to be canceled including, where applicable, each program, project, or activity to which the budget item relates. The bill shall specify the amount, if any, of each budget item that the President designates for deficit reduction as provided in paragraph (4).

''(B) A special message may be transmitted under this section—

''(i) during the 20-calendar-day period (excluding Saturdays, Sundays, and legal holidays) commencing on the day after the date of enactment of the provision proposed to be rescinded or repealed; or

''(ii) at the same time as the President's budget.

''(2) In the case of an Act that includes budget items within the jurisdiction of more than one committee of a House, the President in proposing to cancel such budget item under this section shall send a separate special message and accompanying draft bill for each such committee.

''(3) Each special message shall specify, with respect to the budget item proposed to be canceled—

''(A) the amount that the President proposes be canceled;

''(B) any account, department, or establishment of the Government to which such budget item is available for obligation, and the specific project or governmental functions involved;

''(C) the reasons why the budget item should be canceled;

''(D) to the maximum extent practicable, the estimated fiscal, economic, and budgetary effect (including the effect on outlays and receipts in each fiscal year) of the proposed cancellation; and

''(E) all facts, circumstances, and considerations relating to or bearing upon the proposed cancellation and the decision to effect the proposed cancellation, and to the maximum extent practicable, the estimated effect of the proposed cancellation upon the objects, purposes, and programs for which the budget item is provided.

''(4)(A) Not later than 5 days after the date of enactment of a bill containing an amount designated by the President for deficit reduction under paragraph (1), the President shall—

''(i) with respect to a rescission bill, reduce the discretionary spending limits under section 601 of the Congressional Budget Act of 1974 for the budget year and each outyear to reflect such amount; and

''(ii) with respect to a repeal of a tax expenditure or direct spending, adjust the balances for the budget year and each outyear under section 252(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 to reflect such amount.

''(B) Not later than 5 days after the date of enactment of a bill containing an amount designated by the President for deficit reduction under paragraph (1), the chairs of the Committees on the Budget of the Senate and the House of Representatives shall revise levels under section 311(a) and adjust the committee allocations under section 602(a) to reflect such amount.

''(c) PROCEDURES FOR EXPEDITED CONSIDERATION.—

''(1)(A) Before the close of the second day of session of the Senate and the House of Representatives, respectively, after the date of receipt of a special message transmitted to Congress under subsection (b), the majority leader or minority leader of each House shall introduce (by request) the draft bill accompanying that special message. If the bill is not introduced as provided in the preceding sentence in either House, then, on the third day of session of that House after the date of receipt of that special message, any Member of that House may introduce the bill.

''(B) The bill shall be referred to the appropriate committee or (in the House of Representatives) committees. The committee shall report the bill without substantive revision and with or without recommendation. The committee shall report the bill not later than the seventh day of session of that House after the date of receipt of that special message. If the committee fails to report the bill within that period, the committee shall be automatically discharged from consideration of the bill, and the bill shall be placed on the appropriate calendar.

''(C) A vote on final passage of the bill shall be taken in the Senate and the House of Representatives on or before the close of the 10th day of session of that House after the date of the introduction of the bill in that House. If the bill is passed, the Clerk of the Senate or the House of Representatives, as the case may be, shall cause the bill to be engrossed, certified, and transmitted to the other House within one calendar day of the day on which the bill is passed.

''(2)(A) During consideration under this subsection in the House of Representatives, any Member of the House of Representatives may move to strike any proposed cancellation of a budget item.

''(B) A motion in the House of Representatives to proceed to the consideration of a bill under this subsection shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

''(C) Debate in the House of Representatives on a bill under this subsection shall not exceed 4 hours, which shall be divided equally between those favoring and those opposing the bill. A motion further to limit debate shall not be debatable. It shall not be in order to move to recommit a bill under this

subsection or to move to reconsider the vote by which the bill is agreed to or disagreed to.

''(D) Appeals from decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to a bill under this section shall be decided without debate.

''(E) Except to the extent specifically provided in this section, consideration of a bill under this section shall be governed by the Rules of the House of Representatives. It shall not be in order in the House of Representatives to consider any rescission bill introduced pursuant to the provisions of this section under a suspension of the rules or under a special rule.

''(3)(A) During consideration of a bill under this subsection in the Senate, any Member of the Senate may move to strike any proposed cancellation of a budget item.

''(B) It shall not be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

''(C) Debate in the Senate on a bill under this subsection, and all debatable motions and appeals in connection therewith (including debate pursuant to subparagraph (D)), shall not exceed 10 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

''(D) Debate in the Senate on any debatable motion or appeal in connection with a bill under this subsection shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover and the manager of the bill, except that in the event the manager of the bill is in favor of any such motion or appeal, the time in opposition thereto, shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from time under their control on the passage of a bill, allot additional time to any Senator during the consideration of any debatable motion or appeal.

''(E) A motion in the Senate to further limit debate on a bill under this subsection is not debatable. A motion to recommit a bill under this subsection is not in order.

''(F) If the Senate proceeds to consider a bill introduced in the House of Representatives under paragraph (1)(A), then any Senator may offer as an amendment the text of the companion bill introduced in the Senate under paragraph (1)(A) as amended if amended (under subparagraph (A)). Debate in the Senate on such bill introduced in the House of Representatives, and all debatable motions and appeals in connection therewith (including debate pursuant to subparagraph (D)), and any amendment offered under this subparagraph, shall not exceed 10 hours minus such times (if any) as Senators consumed or yielded back during consideration of the companion bill introduced in the Senate under paragraph (1)(A).

''(4) Debate in the House of Representatives or the Senate on the conference report on any bill considered under this section shall be limited to not more than 2 hours, which shall be divided equally between the majority leader and the minority leader. A motion further to limit debate is not debatable. A motion to recommit the conference report is not in order, and it is not in order to move to reconsider the vote by which the conference report is agreed to or disagreed to.

''(d) AMENDMENTS AND DIVISIONS PROHIBITED.—Except as otherwise provided by this section, no amendment to a bill considered under this section shall be in order in either the Senate or the House of Representatives. It shall not be in order to demand a division of the question in the House of Representatives (or in a Committee of the Whole). No motion to suspend the application of this subsection shall be in order in the House of Representatives, nor shall it be in order in the House of Representatives to suspend the application of this subsection by unanimous consent.

''(e) TEMPORARY PRESIDENTIAL AUTHORITY TO RESCIND.—At the same time as the President transmits to Congress a special message proposing to rescind budget authority, the President may direct that any budget authority proposed to be rescinded in that special message shall not be made available for obligation for a period not to exceed 45 calendar days from the date the President transmits the special message to Congress.

''(f) DEFINITIONS.—For purposes of this section—

''(1) the term 'appropriation Act' means any general or special appropriation Act, and any Act or joint resolution making supplemental, deficiency, or continuing appropriations;

''(2) the term 'direct spending' shall have the same meaning given such term in section 250(c)(8) of the Balanced Budget and Emergency Deficit Control Act of 1985;

''(3) the term 'budget item' means—

''(A) an amount, in whole or in part, of budget authority provided in an appropriation Act;

''(B) an amount of direct spending; or

''(C) a targeted tax benefit;

''(4) the term 'cancellation of a budget item' means—

''(A) the rescission of any budget authority provided in an appropriation Act;

''(B) the repeal of any amount of direct spending; or

''(C) the repeal of any targeted tax benefit; and

''(5) the term 'targeted tax benefit' means any provision which has the practical effect of providing a benefit in the form of a different treatment to a particular taxpayer or a limited class of taxpayers, whether or not such provision is limited by its terms to a particular taxpayer or a class of taxpayers. Such term does not include any benefit provided to a class of taxpayers distinguished on the basis of general demographic conditions such as income, number of dependents, or marital status.''.

(b) EXERCISE OF RULEMAKING POWERS.—Section 904 of the Congressional Budget Act of 1974 (2 U.S.C. 621 note) is amended—

(1) in subsection (a), by striking ''and 1017'' and inserting ''1012A, and 1017''; and

(2) in subsection (d), by striking ''section 1017'' and inserting ''sections 1012A and 1017''.

(c) CLERICAL AMENDMENTS.—The table of sections for subpart B of title X of the Congressional Budget and Impoundment Control Act of 1974 is amended by inserting after the item relating to section 1012 the following:

''Sec. 1012A. Expedited consideration of certain proposed rescissions and repeals of tax expenditures and direct spending.''.

(d) EFFECTIVE PERIOD.—The amendments made by this Act shall—

(1) take effect on the date that is 1 day after the date of enactment of this Act;

(2) apply only to budget items provided in Acts enacted on or after the date of enactment of this Act; and

(3) cease to be effective on September 30, 2002.''.

Mr. BYRD. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 3666 TO AMENDMENT NO. 3665

Mr. BYRD. Mr. President, I send another amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD] proposes an amendment numbered 3666 to amendment No. 3665.

Mr. DOMENICI. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The amendment is as follows:

Strike all after the first word in the substitute amendment and insert the following: ''instructions to the managers on the part of the Senate to disagree to the conference substitute recommended by the committee of conference and insist on inserting the text of S. 14 as introduced in the Senate on January 4, 1995 (with certain exceptions) which is as follows:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Legislative Line Item Veto Act''.

SEC. 2. EXPEDITED CONSIDERATION OF CERTAIN PROPOSED RESCISSIONS AND REPEALS OF TAX EXPENDITURES AND DIRECT SPENDING.

(a) IN GENERAL.—Title X of the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 621 et seq.) is amended by adding after section 1012 the following new section:

''EXPEDITED CONSIDERATION OF CERTAIN PROPOSED RESCISSIONS AND REPEALS OF TAX EXPENDITURES AND DIRECT SPENDING

''SEC. 1012A. (a) PROPOSED CANCELLATION OF BUDGET ITEM.—The President may propose, at the time and in the manner provided in subsection (b), the cancellation of any budget item provided in any Act.

''(b) TRANSMITTAL OF SPECIAL MESSAGE.—

''(1)(A) Subject to the time limitations provided in subparagraph (B), the President may transmit to Congress a special message proposing to cancel budget items and include with that special message a draft bill that, if enacted, would only cancel those budget items as provided in this section. The bill shall clearly identify each budget item that is proposed to be canceled including, where applicable, each program, project, or activity to which the budget item relates. The bill shall specify the amount, if any, of each budget item that the President designates for deficit reduction as provided in paragraph (4).

''(B) A special message may be transmitted under this section—

''(i) during the 20-calendar-day period (excluding Saturdays, Sundays, and legal holidays) commencing on the day after the date of enactment of the provision proposed to be rescinded or repealed; or

''(ii) at the same time as the President's budget.

''(2) In the case of an Act that includes budget items within the jurisdiction of more than one committee of a House, the President in proposing to cancel such budget item under this section shall send a separate special message and accompanying draft bill for each such committee.

''(3) Each special message shall specify, with respect to the budget item proposed to be canceled—

''(A) the amount that the President proposes be canceled;

''(B) any account, department, or establishment of the Government to which such budget item is available for obligation, and the specific project or governmental functions involved;

''(C) the reasons why the budget item should be canceled;

''(D) to the maximum extent practicable, the estimated fiscal, economic, and budgetary effect (including the effect on outlays and receipts in each fiscal year) of the proposed cancellation; and

''(E) all facts, circumstances, and considerations relating to or bearing upon the proposed cancellation and the decision to effect the proposed cancellation, and to the maximum extent practicable, the estimated effect of the proposed cancellation upon the objects, purposes, and programs for which the budget item is provided.

''(4)(A) Not later than 5 days after the date of enactment of a bill containing an amount designated by the President for deficit reduction under paragraph (1), the President shall—

''(i) with respect to a rescission bill, reduce the discretionary spending limits under section 601 of the Congressional Budget Act of 1974 for the budget year and each outyear to reflect such amount; and

''(ii) with respect to a repeal of a tax expenditure or direct spending, adjust the balances for the budget year and each outyear under section 252(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 to reflect such amount.

''(B) Not later than 5 days after the date of enactment of a bill containing an amount designated by the President for deficit reduction under paragraph (1), the chairs of the Committees on the Budget of the Senate and the House of Representatives shall revise levels under section 311(a) and adjust the committee allocations under section 602(a) to reflect such amount.

''(c) PROCEDURES FOR EXPEDITED CONSIDERATION.—

''(1)(A) Before the close of the second day of session of the Senate and the House of Representatives, respectively, after the date of receipt of a special message transmitted to Congress under subsection (b), the majority leader or minority leader of each House shall introduce (by request) the draft bill accompanying that special message. If the bill is not introduced as provided in the preceding sentence in either House, then, on the third day of session of that House after the date of receipt of that special message, any Member of that House may introduce the bill.

''(B) The bill shall be referred to the appropriate committee or (in the House of Representatives) committees. The committee shall report the bill without substantive revision and with or without recommendation. The committee shall report the bill not later than the seventh day of session of that House after the date of receipt of that special message. If the committee fails to report the bill within that period, the committee shall be automatically discharged from consideration of the bill, and the bill shall be placed on the appropriate calendar.

''(C) A vote on final passage of the bill shall be taken in the Senate and the House of Representatives on or before the close of the 10th day of session of that House after the date of the introduction of the bill in that House. If the bill is passed, the Clerk of the Senate or the House of Representatives, as the case may be, shall cause the bill to be engrossed, certified, and transmitted to the other House within one calendar day of the day on which the bill is passed.

''(2)(A) During consideration under this subsection in the House of Representatives, any Member of the House of Representatives may move to strike any proposed cancellation of a budget item.

''(B) A motion in the House of Representatives to proceed to the consideration of a bill under this subsection shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

''(C) Debate in the House of Representatives on a bill under this subsection shall not exceed 4 hours, which shall be divided equally between those favoring and those opposing the bill. A motion further to limit debate shall not be debatable. It shall not be in order to move to recommit a bill under this subsection or to move to reconsider the vote by which the bill is agreed to or disagreed to.

''(D) Appeals from decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to a bill under this section shall be decided without debate.

''(E) Except to the extent specifically provided in this section, consideration of a bill under this section shall be governed by the Rules of the House of Representatives. It shall not be in order in the House of Representatives to consider any rescission bill introduced pursuant to the provisions of this section under a suspension of the rules or under a special rule.

''(3)(A) During consideration of a bill under this subsection in the Senate, any Member of the Senate may move to strike any proposed cancellation of a budget item.

''(B) It shall not be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

''(C) Debate in the Senate on a bill under this subsection, and all debatable motions and appeals in connection therewith (including debate pursuant to subparagraph (D)), shall not exceed 10 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

''(D) Debate in the Senate on any debatable motion or appeal in connection with a bill under this subsection shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover and the manager of the bill, except that in the event the manager of the bill is in favor of any such motion or appeal, the time in opposition thereto, shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from time under their control on the passage of a bill, allot additional time to any Senator during the consideration of any debatable motion or appeal.

''(E) A motion in the Senate to further limit debate on a bill under this subsection is not debatable. A motion to recommit a bill under this subsection is not in order.

''(F) If the Senate proceeds to consider a bill introduced in the House of Representatives under paragraph (1)(A), then any Senator may offer as an amendment the text of the companion bill introduced in the Senate under paragraph (1)(A) as amended if amended (under subparagraph (A)). Debate in the Senate on such bill introduced in the House of Representatives, and all debatable motions and appeals in connection therewith (including debate pursuant to subparagraph (D)), and any amendment offered under this subparagraph, shall not exceed 10 hours minus such times (if any) as Senators consumed or yielded back during consideration of the companion bill introduced in the Senate under paragraph (1)(A).

''(4) Debate in the House of Representatives or the Senate on the conference report on any bill considered under this section shall be limited to not more than 2 hours, which shall be divided equally between the majority leader and the minority leader. A motion further to limit debate is not debatable. A motion to recommit the conference report is not in order, and it is not in order to move to reconsider the vote by which the conference report is agreed to or disagreed to.

''(d) AMENDMENTS AND DIVISIONS PROHIBITED.—Except as otherwise provided by this section, no amendment to a bill considered under this section shall be in order in either the Senate or the House of Representatives. It shall not be in order to demand a division of the question in the House of Representatives (or in a Committee of the Whole). No motion to suspend the application of this subsection shall be in order in the House of Representatives, nor shall it be in order in the House of Representatives to suspend the application of this subsection by unanimous consent.

''(e) TEMPORARY PRESIDENTIAL AUTHORITY TO RESCIND.—At the same time as the President transmits to Congress a special message proposing to rescind budget authority, the President may direct that any budget authority proposed to be rescinded in that special message shall not be made available for obligation for a period not to exceed 45 calendar days from the date the President transmits the special message to Congress.

''(f) DEFINITIONS.—For purposes of this section—

''(1) the term 'appropriation Act' means any general or special appropriation Act, and any Act or joint resolution making supplemental, deficiency, or continuing appropriations;

''(2) the term 'direct spending' shall have the same meaning given such term in section 250(c)(8) of the Balanced Budget and Emergency Deficit Control Act of 1985;

''(3) the term 'budget item' means—

''(A) an amount, in whole or in part, of budget authority provided in an appropriation Act;

''(B) an amount of direct spending; or

''(C) a targeted tax benefit;

''(4) the term 'cancellation of a budget item' means—

''(A) the rescission of any budget authority provided in an appropriation Act;

''(B) the repeal of any amount of direct spending; or

''(C) the repeal of any targeted tax benefit; and

''(5) the term 'targeted tax benefit' means any provision which has the practical effect of providing a benefit in the form of a different treatment to a particular taxpayer or a limited class of taxpayers, whether or not such provision is limited by its terms to a particular taxpayer or a class of taxpayers. Such term does not include any benefit provided to a class of taxpayers distinguished on the basis of general demographic conditions such as income, number of dependents, or marital status.''.

(b) EXERCISE OF RULEMAKING POWERS.—Section 904 of the Congressional Budget Act of 1974 (2 U.S.C. 621 note) is amended—

(1) in subsection (a), by striking ''and 1017'' and inserting ''1012A, and 1017''; and

(2) in subsection (d), by striking ''section 1017'' and inserting ''sections 1012A and 1017''.

(c) CLERICAL AMENDMENTS.—The table of sections for subpart B of title X of the Congressional Budget and Impoundment Control Act of 1974 is amended by inserting after the item relating to section 1012 the following:

''Sec. 1012A. Expedited consideration of certain proposed rescissions and repeals of tax expenditures and direct spending.''.

(d) EFFECTIVE PERIOD.—The amendments made by this Act shall—

(1) take effect on the date that is 2 days after the date of enactment of this Act;

(2) apply only to budget items provided in Acts enacted on or after the date of enactment of this Act; and

(3) cease to be effective on September 30, 2002.''.

Mr. DOMENICI. Mr. President, before I suggest the absence of a quorum, let me ask Senator BYRD if he is getting close to being able to agree to a time limit.

Mr. BYRD. Yes, I am.

Mr. DOMENICI. Mr. President, we are in the process of restructuring this to accommodate what he has done. 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. DOMENICI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

UNANIMOUS-CONSENT AGREEMENT

Mr. DOMENICI. Mr. President, I believe we are ready to enter into a unanimous-consent agreement. I am going to read it. Senator BYRD has seen it. Perhaps he has some suggestions, but let us get it on the RECORD right now.

I ask unanimous consent that during the consideration of the conference report on S. 4, the line-item veto bill, there be a total of 9 hours for debate on the conference report, with 4 hours under the control of Senator DOMENICI, or his designee, with the last hour of Senator DOMENICI's time under the control of Senators MCCAIN and COATS; further, the remaining 5 hours under the control of Senator BYRD; any motions be limited to 60 minutes equally divided and any amendments thereto be limited to 60 minutes equally divided, as well, with all time counting against the overall limitation for debate; and further, that following the expiration or yielding back of time and disposition of any motions, the Senate proceed to vote on the adoption of the conference report with no intervening action.

I further ask unanimous consent that all the time used for debate up to now on the Republican side relative to the conference report be deducted from the time allotted under the consent agreement.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Time is now controlled.

Mr. DOMENICI. I thank the Chair, and I thank Senator BYRD.

The PRESIDING OFFICER. Time is now controlled. Who yields time?

Mr. DOMENICI. Mr. President, parliamentary inquiry. How much time have we used on our side in favor of the bill?

The PRESIDING OFFICER. The majority has used 38 minutes.

Mr. DOMENICI. I thank the Chair. I yield the floor.

Mr. HATFIELD addressed the Chair.

Mr. BYRD. Mr. President, I yield 15 minutes of the time under my control to the distinguished senior Senator from Oregon, [Mr. HATFIELD].

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. I thank the Senator from West Virginia for his yielding me time.

Mr. President, a very interesting experience occurred this morning at the Senate prayer breakfast. That is that former Senator Joseph Tydings from Maryland came to join us and some of the newer Senators sitting in our area, and we were informed about Senator Joe Tydings' father, Senator Millard Tydings, who represented the State of Maryland and had a very interesting political experience; and that was that he stood up, as a Democrat, to the effort on the part of President Roosevelt in 1937 to alter the structure of the Supreme Court, and that, as a result, President Roosevelt undertook a purge in the 1938 elections of those Senators who blocked his effort to change the structure of the Supreme Court which was in effect termed in those days ''to pack the Court.''

But he failed because the people of Maryland, as well as the people from Georgia, both returned those Senators that helped fight the packing of the Supreme Court—Democrats. They said, in effect, we support Mr. Roosevelt and the New Deal, but when he begins to tamper with the separation of powers and the checks and balances that our forefathers established in the Constitution, President Roosevelt has gone too far.

Mind you, at that time, Mr. President, there were about 19 Republicans sitting on this side of the aisle, out of the 96, and they had what they called the Cherokee strip because there were not enough seats for the Democrats to stay on that side of the aisle, and they took these back rows across this Senate and occupied those.

Senator Charles McNary of Oregon, with his little band of 19 Senators, with the assistance of the Democrats who would not support a Democratic President in packing the Supreme Court, held Mr. Roosevelt's effort and blocked it.

Mr. Roosevelt was not suggesting that we change the Supreme Court in terms of its rulings and its duties, ''But just let me appoint one here and one there and one somewhere else when they get a certain age and they have not retired,'' because he was facing a hostile Supreme Court which was knocking down his legislation point by point when they found it to be unconstitutional.

Mr. President, this is the greatest effort to shift the balance of power to the White House that has happened since Franklin Roosevelt attempted to pack the Supreme Court. He is asking, ''Oh, just give me a little veto here and a little veto there and a little veto somewhere else, and I select.''

This is a concentration and transfer of power to the Chief Executive. I think it is contrary to sound constitutional practice. I am appalled that my colleagues on the Republican side should help by leading the effort to give more power to the White House, more power to the President of the United States. I suppose this is a generational gap. I grew up thinking only Franklin Roosevelt would ever be the President of the United States. And the Republican cry was, ''He's leading us to a dictatorship,'' the concentration of power in the President's hands. The Republican campaign songs, campaign speeches in campaign after campaign, whether you were running for county sheriff or for Governor or for Senator, was to point to the fact that under the New Deal and President Roosevelt, they were concentrating power in the hands of the Chief Executive. And they were.

But here we are now, anxious to say, ''Oh, please, Mr. President, take this new power. We don't have the ability to exercise the constitutional responsibility of creating and holding the purse strings.''

That is what it is. Call it by any other name, it is still a transfer of power and an enhancement of power in the hands of the President. I think it is a sad commentary on the responsibility and the history and the constitutional duties of the U.S. Congress to say to the President, ''We don't have the capability to exercise this, so we're going to dump it in your lap.''

That was the story we talked about this morning with Senator Joe Tydings, because his father had the courage to stand firm as a Democrat against a Democratic President to stop this kind of imbalance that was being suggested by the President of the United States to add new members to the Supreme Court so he could have his total way. He controlled the Congress of the United States by extraordinary, extraordinary majorities. But it was the Supreme Court that got in his way. So he was going to change the structure of the Supreme Court so he could have more power.

Now, here is an interesting thing. Here is a Republican-led effort to give more power to a Democratic President. Maybe the election will change that in November, but once you transfer that power, no matter who is the President, you have transferred power to the other branch of Government.

One last little incident that I want to mention, and that is a few years ago Frank Church, a Democratic Senator from Idaho—Senator Church had been a strong supporter of President Johnson's Vietnam policy. The day came when he decided to join those of us who were opposing the Vietnam policy, and he got up over there—and I can remember how he made his speech, of stating his position now as an opponent of the Vietnam war. In that speech he quoted Walter Lippmann, who was a very renowned, very respected writer and had commented extensively on the issue of the Vietnam war.

So he quoted Walter Lippmann in his speech in saying, ''I now stand, and I hate to say this to President Johnson, but I have to now take my position in opposition to the war policy.''

Well, a week or so later Senator Church and Bethine, his wife, were down at the White House for a social function that President Johnson invited them to. As was the custom, they were going through the receiving line to pay their respects to President Johnson. You say different kinds of little remarks at that point to the President, very much a personal eyeball to eyeball. So Frank Church said to President Johnson, ''You know, I have this Idaho project, and it's going to be coming down to the White House soon. I hope you'll help me on it.'' President Johnson looked him straight in the eye and said, ''Why don't you go ask Walter Lippmann for it.'' ''Why don't you go ask Walter Lippmann for it.''

I do not have to draw a picture to see the linkage in the President's mind that you have decided not to support me on a war policy, well, I probably will be less than helpful to you on some kind of a project you have in Idaho. It invites all sorts of mischief. I can imagine the days when I stood very much in the minority on this Senate floor in opposing that Vietnam policy. I can very well imagine that I could have been given the same kind of treatment that he was extending to Frank Church, probably more likely because I was a Republican.

But let me say, there is not a single Senator in this body who could not become a target for that kind of political mischief exercised by a President when he wants your vote, when he needs your vote, when he, in effect, is demanding your vote. Then you stand there with your particular constituency when you have some funding of some kind in the Appropriations Committee, and he can just take that pen of his and, bop, just knock you out of the box; or he can say, ''Now, I'll listen to your willingness to support me on this.''

Likewise, it invites political mischief in this body, the Congress. They can load up a bill and say, ''Well, the President now will have to veto that. He'll have to take that kind of political stance. We can embarrass him by forcing him to veto that out of the bill.'' I do not think we want to do that either.

I only wish that we would read our history, and remember that we came to this country to escape monarchies, dictators, czars, kaisers, and those powerful executives that ran everything in their governments. We deliberately set up three branches of government; we deliberately assigned different powers; at the same time, we had mixing of powers.

We are in the middle of an appropriation effort. There is not one way the President of the United States can force us to appropriate a dollar we do not want to appropriate. However, we cannot appropriate a dollar without the President's approval or veto. That is the mixing of powers. He has legislative powers; we have executive powers. Consequently, we should not tinker with something that has worked very well for over 200 years in the separation of powers.

I want to say, I do not trust any President—I do not care whether he is Democrat or Republican—wanting to exercise all the power we want to give to him. Every person in this body that votes for this in the younger generations will live to see the day when it passes that they will regret that they bestowed this kind of power on the Chief Executive of the United States. It is contrary to our Republican doctrine. We want diffusion of power. We want the diffusion and the decentralization of power.

Yet the same Republicans that talk on the one hand about too much power in the Federal Government, we should give more power to local government or more power to the private sector, are now wanting to bestow an additional amount of power on the Chief Executive.

I yield the floor.

Mr. BYRD. Mr. President, I ask that the time that was consumed by Mr. HATFIELD be charged against the 5 hours under my control and not against the time on the motion.

The PRESIDING OFFICER. The Senator has that prerogative. The time will be charged that way.

Mr. STEVENS. Mr. President, I yield such time as I need. It will not be very long. I do want to say at the beginning that I am of the generation of the Senator from West Virginia and the Senator from Oregon, and have taken the positions they have stated in the past.

I am here today to explain why I support this bill.

Mr. DOMENICI. Will the Senator yield?

Mr. STEVENS. I yield.

Mr. DOMENICI. Whatever time is consumed by the Senator, I ask that it be charged against the bill and not against the amendment.

The PRESIDING OFFICER. The Senator has that prerogative. It will be charged that way.

Mr. STEVENS. Mr. President, I was pleased to be able to file this conference report on S. 4, which is called the Line-Item Veto Act. If enacted, I believe it will be the most significant delegation of authority by the Congress to the President since the Constitution was ratified in 1789.

What the Senator from West Virginia and the Senator from Oregon has said is true. It is a major, major, change in the policy of the Congress toward the executive branch. It is a temporary delegation of authority under this bill. This delegation is necessary and appropriate to help reduce the current Federal budget deficit, a deficit that I believe threatens to destroy the future well-being of our great Nation.

It is not without a lot of soul searching that I made the change in position that I have made on this bill. Mr. President, 43 Governors around the country have some form of line-item veto authority, including my own Governor in Alaska. As Governor of California, Ronald Reagan used the line-item veto authority to effectively reduce wasteful spending.

I have opposed this bill in the past because it did not cover the largest culprits of wasteful spending: entitlements and tax breaks for special interests. Together, they account for hundreds of billions of dollars each year. I opposed this bill because I did not think that we were committed to a balanced budget concept. This bill goes together with the balanced budget amendment and the significant steps that the Congress took in the Gramm-Rudman-Hollings procedures. In my judgment, this bill will enable the President to assist in carrying out the original intention of Gramm-Rudman-Hollings. At my request, the bill has been expanded and broadened to cover not only appropriations for specific projects but tax breaks and entitlements as well.

Today, Congress has the power to cut programs the President proposes that we believe are unnecessary, but unless the President vetoes an entire appropriations bill, he is powerless to single out a specific project he opposes. Likewise, unless he vetoes an entire tax bill, he cannot eliminate an unnecessary tax break designed to benefit only a narrow, special interest. This bill gives the President those powers temporarily.

In his annual State of the Union Address nearly 15 years ago, President Reagan came before us and asked us for the same power that Governors have, the power the Governor of Alaska has, and that he enjoyed as the Governor of California. Today, we are giving a President what President Reagan requested, but it is enhanced, Mr. President. It is more than President Reagan requested. It has been a long time coming, and I am pleased and hope that we will fulfill his dream. I want everyone to understand it is much, much, greater than what President Reagan asked for.

I have supported this conference report because it includes the core concept that I insisted on when the Senate considered S. 4 a year ago. That was that the line-item authority would apply to all three areas of Federal spending. Until then, as I said before, the proposals for a line-item veto hit only appropriations and left those large culprits, entitlements and target tax breaks, untouched.

The conference report gives to the President the specific authority to cancel dollar amounts of discretionary budget authority, items of new direct spending, and limited tax benefits in any law that is enacted after the effective date. This means the President will be able to line out specific items in all three areas of Federal spending, whether it be appropriations, entitlements, or limited tax breaks.

The cancellation would be effective immediately and the money that is not spent goes to deficit reduction. It is part of the budget process, in my opinion. Money that is saved because of the

exercise of the veto in this bill cannot be spent for any other purpose by the President or by Congress.

Now, much has been said in the press about the need for the line-item veto to control wasteful spending through the appropriations process. We have heard from the former chair of the Appropriations Committee and the current chairman of the Appropriations Committee. I still have hopes and dreams that I may be chair of the Appropriations Committee.

Many people wonder why I have changed my mind at this time. I think that some Members here seem to miss the fact that the discretionary appropriations account only for 35 percent—not even 35 percent, but approximately 35 percent—of Federal spending. The remainder of Federal spending is mandatory, in the form of entitlements, tax breaks, interest on the national debt, items we cannot control. There is no figure available for the amount of revenue that is lost to the Government through these targeted tax breaks, what the conference report now calls limited tax benefits.

If the Balanced Budget Act that Congress sent to the President had not been vetoed, by fiscal year 2002 discretionary appropriations would account only for 26 percent of Federal spending, a decrease of 9 percent even without the line-item veto. Let me repeat that: Congress agreed to a bill that the President vetoed that would have reduced the moneys covered by the appropriations process within a 7-year-period by 9 percent. The Congress already vetoed the prospect of an increase to the extent of 9 percent, Mr. President. By contrast, entitlements under the balanced budget bill that we passed and the President vetoed would have grown from 55 percent to 60 percent of Federal spending. The increase would continue. That was an increase of 5 percent in 7 years, with interest on the national debt accounting for the balance of Federal expenditures.

To put it another way, Mr. President, in 1980 the Defense Department accounted for 23 percent of Federal spending while the Social Security Administration accounted for 19 percent, and the Department of Health and Human Services 10 percent of total Federal spending. Seventeen years later, the Department of Defense will get 17 percent; Social Security, 25 percent; Health and Human Services, 22 percent. In other words, the Department of Defense continues to go down while Social Security and Health and Human Services continues to go up.

Defense spending is all discretionary. It would be subject to the line-item veto under the original concept. The other two agencies that handle primarily entitlement programs would have been immune under the original line item veto concept.

This conference report allows the President to cancel new direct spending, which means any provision contained in nonappropriations laws which increase Federal spending above the current baseline. By allowing the President to cancel increases in existing entitlement programs, or the creation of new ones, the conference report provides the opportunity to control the explosive growth in mandatory spending. I basically support this bill because it now will give us a tool to require the President to help us control the growth in nondiscretionary spending.

Now, I think that ought to be very clear. In the area of taxes, the conference report does not go as far as I would have liked. But it was the best that we could get the conferees to agree to. Under our agreement, the President could cancel any limited tax benefit in a law under one of two conditions:

First, if the law contains a list of specific provisions, identified by the Joint Committee on Taxation as meeting the definition of a limited tax benefit in the conference report before the Senate now, then the President may cancel any provision so identified.

Second, if the law does not contain such a list prepared by the Joint Tax Committee, then the President may cancel any provision that meets the definition, in his opinion, of the limited tax benefit contained in this conference report. As I mentioned earlier, Mr. President, there is no ready list of revenue that has been lost to the Federal Government through targeted tax benefits. However, I believe it continues to run into hundreds of billions of dollars.

In the analytical perspectives that accompanied the President's 1997 budget, there is a table on pages 86 and 87 that I call to the Senate's attention. This lists the revenue that will be lost from major tax breaks of the past. The largest is $70 billion in fiscal year 1997 for the exclusion of employer contributions to medical insurance.

Over fiscal years 1997 to 2001, that exemption will cost the Government $423 billion. Let me repeat that in case anyone did not get that. In the period of time between 1997 and 2001, in the exemption that is already in one of the tax bills that exempts employer contributions to medical insurance, we will lose revenues of $423 billion. That is 75 percent of the entire discretionary budget that we are working on now in the Appropriations Committee.

The smallest tax break listed in the President's addendum is a special alternative tax on small property and casualty insurance companies. That provision will cost the Government, according to the President's statement, $25 million between 1997 and 2001.

It is impossible to tell from the table whether any of the provisions listed would in fact meet the definition of limited tax benefits under the conference report. I urge the Senate to remember that. It may well be that, although we are starting toward an attempt to give the President the right to eliminate limited tax breaks, we may have so defined limited tax breaks that they will never be touchable by the veto pen. But I think it illustrates my point that appropriations are not now, nor will they be in the future, totally responsible for the current Federal budget deficit. They are a part of it. They are a part of it, but the major part of it is the entitlement spending and the special tax breaks that account for so much of the problem.

In the case of appropriations, the President may cancel any dollar amount identified in an appropriations bill itself, or in the accompanying statement of managers or committee reports.

In addition, if an authorizing law has the effect of requiring the expenditure of funds provided in appropriations law for a particular program or project, the President may also cancel the dollar amount specified in the authorization law. I am not sure how many Senators realize that. But this is a very, very broad power we are delegating to the President of the United States.

The delegation is carefully structured in order to precisely define the President's authority.

In order to increase the President's discretion to cancel dollar amounts, the conferees agreed to allow the President to use the statement of managers or the governing committee report to identify those dollar amounts.

However, in order to prevent disagreements between the President and Congress over the dollar amount that can be canceled, the conferees specifically limited the President's authority to the entire dollar amount specified by Congress in the particular document he references—either the law itself or an accompanying report.

In addition, the President is required to cancel the entire dollar amount and may not cancel part of that dollar amount.

This limitation was included in order to ensure that the line item veto authority is not used to change policies adopted by the Congress that deals with appropriations or increases in tax benefits or entitlements. The line item authority cannot, for example, be used to reduce the amount appropriated for B–2 bombers so that the number of the bombers has changed. He must delete the entire amount to effect a change in policy.

Likewise, the conferees made clear that the cancellation authority does not apply to any condition, limitation, or restriction on the expenditure of funds or activities involving expenditure of funds.

This means, for example, that the President cannot cancel a prohibition on the expenditure of funds to implement a particular law or regulation.

The statement of managers before the Senate contains a number of specific examples to illustrate the conferees' intent with respect to those items the President may cancel in appropriations bills, and I want to incorporate those in my remarks at the conclusion.

I ask unanimous consent that they be printed following my remarks.

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

(See exhibit 1.)

Mr. STEVENS. Mr. President, as the Senator from New Mexico, PETE DOMENICI, said earlier today, this has been a difficult conference. Senator DOMENICI and his staff worked tirelessly on this conference report and deserve much of the credit for it.

Let me review just briefly some of the differences that had to be resolved. In the House bill, there was an enhanced rescissions approach, while the Senate bill that went to conference used separate enrollment.

The House bill applied only to appropriations and targeted taxes, while the Senate bill applied to appropriations, any tax that favored any one group, and new entitlement programs as well.

The House bill made the President's line item veto of a program effective after a congressional review period, while the Senate used a constitutional veto that was effective immediately.

The Senate bill contained a mandatory lockbox for deficit reduction. The House bill did not.

The Senate bill contained a sunset, and the House bill did not.

The list can go on and on, but foremost among all of these issues were real questions about just what it was that we were delegating to the President, and if that delegation would be found constitutional.

After many long days and nights, and not a few testy meetings—and I must say, these conferences were the most acrimonious I have faced in 28 years—I believe that we have taken the best elements of both bills and created something that will work as Congress intends. I think it may be too narrow, rather than too broad, before we are through.

More importantly, I think we have a clear delegation of authority to the President for a specific purpose, and it is for the purpose of deficit reduction. That is what will pass constitutional muster, and I urge Members to remember that.

This is a bill for deficit reduction that goes hand-in-hand with the concept of a balanced budget bill, a bill to require the elimination of a deficit. It is a mechanism to assist in congressional discipline to ensure that the Congress and the executive branch exercise the discipline that is necessary to bring about an elimination of the deficit that so plagues our future. It is not something that is a permanent change in constitutional power. If it is to be continued, that is for someone who comes to this body after most of us will have left. But, as a practical matter, I think it is a step that must be taken if we are to demonstrate our complete commitment to the concept of eliminating a deficit and bringing about a balanced budget.

I want to congratulate the members of the conference. In particular, I want to point to the chairman of the Budget Committee, who was a cochairman of the Senate portion of the conference, and I point to Senators MCCAIN and COATS, who brought the original concept to the floor, and Chairmen CLINGER and SOLOMON on the House side. Their hard work helped to bring this bill together and bring it before the two bodies now.

We are all indebted to our majority leader, Senator DOLE. He really held our noses—and sometimes other things—to the grindstone.

I thank the current occupant of the chair, Senator LOTT, for his role as the assistant majority leader.

Mr. President, this bill is really a significant bill. Anyone who thinks it is something that should be passed over lightly is wrong. It is a major change in the balance of Government power. It is really a check on the check of the checks and balances, as far as I am concerned.

We are indebted to the staff who worked out many of the problems which we encountered with this bill. We would point them in the general direction, and they came back with language and concepts that would fulfill our goal.

Earl Comstock, who is here with me now, on my personal staff; Christine Ciccone, who helped from the Governmental Affairs Committee; Austin Smythe, Bill Hoagland, Beth Felder, and Jennifer Smith on the Budget Committee; Mark Busey with Senator MCCAIN; Sharon Soderstrom and Megan Gilly with Senator COATS; John Schall with Senator DOLE; Monty Tripp with Chairman CLINGER; Eric Pelliter with Chairman SOLOMON; and Wendy Selig with Congressman GOSS.

We got to know them pretty well, Mr. President. Unfortunately, they got to know us too well.

I think this is truly a momentous piece of legislation. I regret deeply that I disagree with my good friend from West Virginia and my chairman of the Appropriations Committee now. In my judgment, if it is my watch between the years 1997 and 2000, I intend to see to it that the Appropriations Committee heeds this warning. If we take action which might lead to increases in the deficit, if we allow funds to be spent which are not necessary, I hope the President will use this authority. If he uses his pen, as my good friend from West Virginia suggests, in a political fashion—if any President does that, he or she—during this period we are dealing with, then I think this is a powerful tool that will go away. The Congress will not allow the executive branch to have a power such as this to be exercised frivolously or politically.

This is a change in the Government structure we are suggesting. We are suggesting that the President hold the pen which allows the Congress to carry out the discipline that it imposed on itself. Gramm-Rudman-Hollings started this, Mr. President, and this bill that is before us today will continue the mechanisms of discipline to bring about elimination of the deficit. I pray to the good Lord that we will succeed this time.

Thank you, Mr. President.

I have asked that one page from this report be printed after my remarks. I call the Senate's attention to it. I do hope every Senator will read it. It is on page 20, section 1021, line-item veto authority.

That is what this bill is, not what it is not, but that is what it is. I think Senators should realize that.

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

(See exhibit 2.)

EXHIBIT 1

EXCERPT FROM STATEMENT OF MANAGERS

(7) Dollar Amount of Discretionary Budget Authority. The term ''dollar amount of discretionary budget authority'' is carefully defined in section 1026(7) in order to ensure that the President's authority to cancel discretionary spending in appropriation laws is clearly delineated. The conference report delegates the authority to the President to cancel in whole any dollar amount specified in an appropriation law.

In addition, to increase the President's discretion, the conference report allows the President to cancel a dollar amount of budget authority provided in an appropriation law by specific amounts identified by the Congress in the statement of managers, the governing committee report, or other law. By limiting the delegation of authority, the conferees intend to preclude arguments between the Executive and Legislative Branches and to ensure that the delegation is not overbroad or vague. As is described in further detail below, the conferees have sought to provide the President the ability to rescind entire dollar amounts, even if not specified as a dollar amount in the law itself, so long as the dollar amount can be clearly identified and is in an indivisible whole with which Congress has previously agreed.

The conferees note that the definition specifically excludes certain types of budget authority that are addressed by other provisions in part C of title X, as well as any restriction, condition, or limitation that Congress places on the expenditure of budget authority or activities involving such expenditure. The exclusion of restrictions, conditions, or limitations is included to make clear that the President may not use the authority delegated in section 1021(a) to cancel anything other than a specific dollar amount of budget authority.

The cancellation authority cannot be used to change, alter, modify, or terminate any policy included by Congress, other than by rescinding a dollar amount. Obviously, if the Congress has included a restriction in the law that prohibits the expenditure of budget authority for any activity, there is no dollar amount to be rescinded by the President, nor would any money be saved for use in reducing the federal budget deficit, which is a requirement for the use of the authority provided under section 1021(a).

As described in subparagraph (A)(i), the President many cancel the entire dollar amount of budget authority specified in an appropriation law. The term ''entire'' means just that; the President may rescind, or ''line out'' the dollar amount of budget authority specified in the law, so that the dollar amount provided in the law becomes zero after the cancellation. For example, in Public Law 104–37, the Agriculture Appropriations Act for Fiscal Year 1996, $49,486,000 was

provided in the law for special grants for agriculture research. Using the authority granted under section 1021(a)(1), as defined under section 1026(7)(A)(i), the President could cancel only the entire $49,486,000.

Further, again under subparagraph (A)(i), if the appropriation law does not include a specific dollar amount, but does include a specific proviso that requires the allocation of a specific dollar amount, then the President may rescind the entire dollar amount that is required by the proviso. A fictitious example of what the conferees intend in this case follows:

An appropriation law includes a provision that states ''for the operation and maintenance of the Army, $1,400,000,000, provided Fort Fictitious is maintained at Fiscal Year 1995 levels,''. In this instance, the President could ascertain what the operation of Fort Fictitious cost in FY 1995, and could rescind that entire amount from the $1.4 billion provided for Army O&M. The conferees note that the President would have to take the entire dollar amount required to operate Fort Fictitious in FY 1995, and could not simply take part of that amount. It is intended to be an all or nothing decision.

As a further specific illustration, the conferees note that the General Construction Account in Public Law 104–46, the Energy and Water Development Appropriations Act, 1996, states:

''$804,573,000 to remain available until expended, of which such sums as necessary pursuant to Public Law 99–662 shall be derived from the Inland Waterways Trust Fund, for one-half of the costs of construction and rehabilitation of inland waterways projects, including rehabilitation costs for the Lock and Dam 25, Mississippi River, Illinois and Missouri . . . ''

In this example, the President could cancel the entire $804,573,000 or could cancel an amount equal to the entire dollar amount that would be required to fund the rehabilitation costs of the Lock and Dam 25 project, noting in his message all information as required by section 1022.

In subparagraph (A)(11) the President is given the authority to rescind the entire dollar amount represented separately in any table, chart, or explanatory text included in the statement of managers or the governing committee report that accompanies an appropriation law. The term ''governing committee report'' is included to address the fact that the current practice in preparing the statement of managers for a conference report on an appropriation law is to simply address changes that were made in the statutory language and the accompanying committee reports, thus leaving intact and incorporating by reference tables, charts, and explanatory text in one of the two committee reports that were not modified by the conference.

An example of the authority described in subparagraph (A)(ii) is found in the Conference Report accompanying the FY 1996 Military Construction Appropriations Act (Public Law 104–32). The statement of managers accompanying the conference report contains a chart denoting allocations of dollars to various installations and projects. On page 38 there is an allocation of $10,400,000 for a physical fitness center at the Bremerton Puget Sound Naval Shipyard. Except for this chart there is no other reference to the physical fitness center in either the statute or narrative explanation in the Conference Report. under the authority provided by the definition in subparagraph (A)(ii), the President could cancel the entire $10,400,000 provided for the physical fitness center, but could not cancel only a part of that amount.

The inclusion of subparagraph (A)(ii) is not intended to give increased legal weight or authority to documents that accompany the law that is enacted. Rather, as an exercise of its authority to specify the terms of the delegation to the President, Congress is choosing to use those documents as a means of allowing the President increased discretion to reduce dollar amounts of discretionary budget authority provided in an appropriation law. In order to ensure that the delegated authority is clear, the conferees have limited that authority to dollar amounts identified by Congress in the appropriation law, the accompanying statement of managers, the governing committee report or other law. Since Congress often provides detailed identification of dollar amounts in the accompanying documents, they represent an agreed upon set of dollar amounts that the President may rescind in their entirety.

Subparagraph (A)(iii) has been included by the conferees to address a specific circumstance where neither the appropriation law nor the accompanying statement of managers or committee reports include any itemization of a dollar amount provided in that appropriation law. However, another law mandates that some portion of the dollar amount provided in the appropriation law be allocated to a specific program, project, or activity that can be quantified as a specific dollar amount. In this case, the President could rescind the entire dollar amount required to be allocated by the other law, since that dollar amount has been identified by Congress as a specific dollar amount that must be spent. As is the case with the earlier provisions, the President could not rescind part of the dollar amount mandated by the other law. It is an all or nothing decision. Likewise, the President could not use the cancellation authority to change, alter, or modify in any what the other law.

An example of the authority provided in subparagraph (A)(iii) is found in section 132 of Public Law 104–106, the National Defense Authorization Act for Fiscal Year 1996. Section 132 states that ''Of the amounts appropriated for Fiscal Year 1996 in the National Defense Sealift Fund, $50,000,000 shall be available only for the Director of the Advanced Research Projects Agency for advanced submarine technology activities.'' In this example the President could ''look through'' the appropriation law to the authorization law that mandates that $50 million is available only for advanced submarine technology activities, and could cancel the entire $50 million.

However, had the appropriation law contained a provision that contradicted or otherwise made the mandate in the authorization law ineffective with respect to the allocation of the National Sealift Fund, then the President would not be able to use the amount in the authorization law as the basis for the cancellation of a dollar amount of discretionary budget authority. As with appropriations laws, the President cannot use the authority in subparagraph (A)(iii) to change, alter, or modify any provision of the authorization law.

Subparagraphs (A)(iv) and (A)(v) are variations on the authority granted in clauses (i) through (iii), and are intended to address the circumstance where Congress does not specify in the appropriation law, the accompanying documents, or other law a specific dollar amount, choosing instead to require the purchase of a particular quantity of goods. Subparagraphs (A)(iv) and (A)(v) allow the President to rescind the entire dollar amount of discretionary budget authority represented by the quantity specified in the law or documents. To determine the specific dollar amount, the President is required to multiply the estimated procurement cost by the total quantity of items specified in the law or documents. The President may then rescind the entire dollar amount represented by the product of those two figures. The conferees expect that the President will use the best available information, as represented by the President's budget submission or binding contract documents, to estimate the procurement cost.

The conferees have included the following example in order to more clearly explain the definition of dollar amount of discretionary budget authority as defined by section 1026(7). These examples are used solely for illustrative purposes and the conferees are in no way commenting on the merit of any of these programs. The conferees do not intend for these examples to represent all instances where cancellation authority may be used.

The FY 1996 Agriculture Appropriations Act (Public Law 104–37) appropriates $49,846,000 in special grants for agriculture research. The Conference Report accompanying this law contains a table that allocates the $49,846,000 total into lesser dollar amounts of all which correspond to individual research programs. This table, for example, contains a $3,758,000 allocation for ''Wood Utilization Research (OR, MS, MN, ME, MI)''.

Using the definition in section 1026(7)(A) (i) and (ii), the President could cancel either the entire $49,846,000 specified in the statute or the entire $3,758,000 described in the chart in the Conference Report. However, because the Congress did not break down the allocations for each state associated with this project the President would not have the authority to take a portion of the $3,758,000 allocated to wood utilization research.

The conferees intend that cancellation authority only applies to whole items. If an item (or project) occurs in more than one state, and the law or a report that accompanies an appropriation law lists an item (project) and then lists a series of states, it is the entire item that must be canceled.

In the example listed above, ''Wood Utilization Research'' appears in the report as: ''Wood Utilization Research (OR, MS, NC, MN, ME, MI).''

The conferees believe it is important to note that this line in the report must be canceled in its entirety. The President's cancellation authority is strictly limited. The President has no authority in this example to cancel wood utilization research for Michigan only.

To further illustrate this example, the conferees submit the following examples that corresponds to a chart contained in the same conference report: ''Aflatoxin (IL), 133,000; Human Nutrition (AR), 425,000; Human Nutrition (IA), 473,000; Wool Research (TX, MT, WY) 212,000.''

In this case, the President may cancel Aflatoxin (IL), Human Nutrition (AR), Human Nutrition (IA), and/or Wool Research (TX, MT, WY). Although there are two human nutrition research projects listed in two different states, because of the manner in which they are listed, each project may be separately canceled. Again, the President may only cancel the entire wool research program and may not cancel only wool research in Texas.

Section 1026(7)(B) describes what is not included in the definition of ''dollar amount of discretionary budget authority.'' Subparagraphs (B)(i) and (B)(ii) exclude items of new direct spending, for which cancellation authority is provided under other sections of part C of title X. Subparagraph (B)(iii) excludes from the definition any budget authority canceled or rescinded in an appropriation law in order to ensure that those cancellations or rescissions cannot be undone by the President using the cancellation authority.

As described earlier, subparagraph (B)(iv) excludes from the definition any restriction,

condition, or limitation in an appropriation law or the accompanying statement of managers or governing committee report on the expenditure of budget authority or on activities involving such expenditure. The following two examples illustrate the conferees' intent that the President cannot use the cancellation authority to alter the Congressional policies included in these restrictions, conditions, or limitations.

The Labor, Health and Human Services and Education and Related Agencies Appropriations Act, H.R. 1217, as amended by the Senate Appropriations Committee contained the following section:

''SEC. 103. No amount of funds appropriated in this Act for fiscal year 1996 may be used to implement, administer, or enforce any executive order, or other rule or order, that prohibits Federal contracts with, or requires that debarment of, or imposes other sanction on, a contractor on the basis that such contractor or organizational unit thereof permanently replaced lawfully striking workers.''

The President's cancellation authority only applies to entire dollar amounts. The above example of ''fencing language'' is a limitation and contains no dollar amount. Therefore, the President has no authority to alter or cancel this statement of Congressional policy.

If a limitation or condition on spending—''fencing language''—is not written as a separate numbered or unnumbered paragraph, but instead is written as a proviso to an appropriated amount, the President still has no power to cancel the proviso.

The Energy and Water Development Appropriations Act, 1996, (Public Law 104–46), Title II, Department of the Interior, General Administrative Expenses, states:

''For necessary expenses of general administration and related functions in the office of the Commissioner, the Denver office, and offices in the five regions of the Bureau of Reclamation, $48,150,000, of which $1,400,000 shall remain available until expended, the total amount to be derived from the reclamation fund and to be nonreimbursable pursuant to the Act of April 19, 1945 (43 U.S.C. 377); *Provided,* that no part of any other appropriation in this Act shall be available for activities or functions budgeted for the current fiscal year as general administrative expenses.

Using this example, the President may cancel $48,150,000 or the $1,400,000 noted, but may not cancel or alter in any way the proviso restricting the use of other appropriated funds contained in this Act.

The conference report also allows the President to cancel the entire amount of budget authority required to be allocated by a specific proviso in an appropriation law for which a specific dollar figure was not included. The conferees recognize that from time to time, budget authority may be mandated to be spent on a specific program or project without a specific dollar amount being listed. However, in order to comply with the proviso, the President would have to expend appropriated funds.

EXHIBIT 2

Sec. 1021. Line item veto authority

Section 1021(a) permits the President to cancel in whole any dollar amount of discretionary budget authority, item of new direct spending, or limited tax benefit contained in any bill or joint resolution that has been signed into law pursuant to Article I, section 7, of the Constitution of the United States. The cancellation may be made only if the President determines such cancellation will reduce the federal budget deficit and will not impair any essential government function or harm the national interest. In addition the President must make any cancellations within five days of the date of enactment of the law from which the cancellations are made, and must notify the Congress by transmittal of a special message within that time.

The conferees specifically include the requirement that a bill or joint resolution must have been signed into law in order to clarify that the cancellation authority only becomes effective after the President has exercised the constitutional authority to enact legislation in its entirety. This requirement ensures that the President affirmatively demonstrates support for the underlying legislation from which specific cancellations are then permitted.

The term ''cancel'' was specifically chosen, and is carefully defined in section 1026. The conferees intend that the President may use the cancellation authority to surgically terminate federal budget obligations. The cancellation authority is specifically limited to any entire dollar amount of discretionary budget authority, item of new direct spending, or limited tax benefit. The cancellation authority does not permit the President to rewrite the underlying law, nor to change any provision of that law. The President may only terminate the obligation of the Federal Government to spend certain sums of money through a specific appropriation or mandatory payment, or the obligation to forego the collection of revenue otherwise due to the Federal Government in the absence of a limited tax benefit.

Likewise, the terms ''dollar amount of discretionary budget authority,'' ''item of new direct spending,'' and ''limited tax benefit'' have been carefully defined in order to make clear that the President may only cancel the entire dollar amount, the specific legal obligation to pay, or the specific tax benefit. ''Fencing language'' may not be canceled by the President under this authority. This means that the President cannot use this authority to modify or alter any aspect of the underlying law, including any restriction, limitation or condition on the expenditure of budget authority, or any other requirement of the law.

The conferees intend that, even once the federal obligation to expend a dollar amount or provide a benefit is canceled, all other operative provisions of the underlying law will remain in effect. If the President desires a broader result, then the President must either ask Congress to modify the law or exercise the President's constitutional power to veto the legislation in its entirety.

The lockbox provision of the conference report has also been included to maintain a system of checks and balances in the President's use of the cancellation authority. Any credit for money not spent, or for revenue foregone, is dedicated to deficit reduction through the operation of the lockbox mechanism. This ensures that the President does not simply cancel a particular dollar amount of discretionary budget authority, item of new direct spending, or limited tax benefit in order to increase spending in other areas.

Section 1021(b) requires the President to consider legislative history and information referenced in law in identifying cancellations. It also requires that the President use the definitions in section 1026, and provides that the President use any sources specified in the law or the best available information.

Section 1021(c) states that the President's cancellation authority shall not apply to a disapproval bill, as defined in section 1026. The provision is intended to prevent an endless loop of cancellations.

Mr. BYRD. Mr. President, will the Senator yield for one moment?

Mr. STEVENS. Yes.

Mr. BYRD. Mr. President, I take this occasion to congratulate the distinguished Senator from Alaska [Mr. STEVENS], and the other Members of the Senate who were conferees.

As I sat and listened to him as he has outlined the changes that were brought within the bill during the meeting of the conference, I commend our Senate conferees. I think they brought about several improvements over the House position. I thank them for that.

Mr. STEVENS. Mr. President, I am honored by those comments.

I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. MCCAIN. Mr. President, I thank the Senator from Alaska for his gracious remarks, and all of those involved in this, including the occupant of the chair, the Senator from Mississippi.

There is very little doubt that the Senator from Alaska had the most difficult time with this legislation. That is understandable given the fact that he will play a key and vital role in the upcoming appropriations process which affects us.

So we are very grateful, not only for his gracious remarks, but for his very cooperative participation in this process.

Mr. President, in behalf of this side, I yield 10 minutes to the Senator from Texas, who also played a very important role from time to time during our conference bringing a degree of insight, particularly helping us understand the difference between enhanced rescissions and real line-item vetoes.

Mr. President, I yield 10 minutes to the Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas is recognized for 10 minutes.

Mr. GRAMM. Mr. President, I believe this bill represents a significant break with the past. I think it does in a very real sense represent the changing of the guard. Might I say that I think it is long overdue.

The last time we balanced the Federal budget was in 1969 when Richard Nixon was President, and it happened only because of a big tax increase that occurred in 1968—an income surtax. It lasted only for 1 year, and then it was gone. The last time we balanced the budget 2 years in a row where the budget was balanced by fiscal restraint by doing what every family and every business in America has to do every year was in the middle of the 1950's when Dwight David Eisenhower was President of the United States.

In other words, we are here today changing the fundamental powers of the Presidency as they relate to the Congress and altering our system of the distribution of that power because for 40 years we have not been able or willing to say ''no.'' And because we have not said ''no,'' because we have said ''yes'' to virtually any organized special interest group with a letterhead, that has meant that families

have had to say ''no'' on a constant basis. The problem is we have said ''yes'' to spending money when ''yes'' was the wrong answer, forcing families to say ''no'' to investing in their future and the future of this country, when ''no'' was the wrong answer. We are here today to try to change that.

What does the line-item veto do, and what does it not do? The line-item veto allows the President to go inside an appropriations bill and to eliminate a program, a project, or an activity. He does not have the ability to change it. He can either say ''yes'' or ''no'' to the whole thing and strike it out, and then alter the budget total at the top of the page.

This will allow the President to exercise leadership in controlling spending and to impose priorities. But, if the Congress does not agree and if there is strong disagreement, the President can be overridden. But what it does, no doubt about it—and the distinguished Senator from West Virginia is right—it changes the balance of power between the Congress and the President in one fundamental way: It gives the President enhanced power to say ''no'' to spending. It does not give him the ability to spend more money. It does not give him the ability to change priorities by partially altering spending figures. It enhances his ability to say ''no.''

It seems to me, Mr. President, after 40 years of living proof every day that our Government cannot say ''no'' when ''no'' is clearly the right answer, the time has come to change the system. This is a fundamental reform, there is no doubt about it.

If you had a President who was honest-to-god willing to get out a pen and to veto, he could change America. And he could change it very, very quickly. Let us hope that the Lord will give us such a person.

What is the problem with which we are trying to deal? The problem is not just this abstract idea of deficits. The problem is that in the mid-1960's, we fundamentally changed America without America ever knowing it, without an election ever being held on this subject, and maybe without Members of Congress knowing it.

What happened is that prior to 1965, in this whole century, excluding the years of the Great Depression, our economy had performed very well. We had experienced an economic growth rate of almost 3.5 percent. From 1950 to 1965, our economy grew at over 4 percent a year. What that meant was new jobs, new growth, new opportunity. It created a situation through the whole of the 20th century, with the exception of 4 years during the Great Depression, where in almost every family in America parents did better than their parents, and they could be almost certain that their children were going to do better than they had done.

Beginning in 1965, we traded that in for a Government growing at an average of 9 percent each and every year since. What has happened is this year the economy is growing at 1.7 percent. The average family's take-home, after-tax pay today is lower than it was in 1992. For the whole decade of the 1970's, the average working American family was worse off at the end of the decade than they were at the beginning because the economy did not perform, because we spent the seed corn of our economy here in Congress, and the President in signing appropriations bills had no ability to go inside those bills and strike items.

So what we are doing today is trying to change a system that is broken. There are clearly people who love the old ways, who believe that Congress ought to have this ability to fill up bills with little add-ons that the President would like to veto but cannot veto without vetoing the whole bill. But I think after 40 years of failure, after 40 years of mortgaging the future of the country, after 40 years of lowering the potential living standard of our people, we have an opportunity if we would change the way Government does its business to guarantee that our grandchildren will be twice as well off as they will be if you continue business as usual.

That is the ability to affect the lives of everybody in this country and everybody on this planet. It is the ability to give people the opportunity to escape poverty and fulfill their dreams. That cannot happen when Government is borrowing 50 cents out of every dollar. So we are here today to change it. This is going to be a fundamental, sweeping change in Government. My only disappointment is that it is not permanent. This is grandfathered, and what it will mean is that if we do have a President who actually uses it, my guess is we will not restore it to them once this expires. I had hoped this would be permanent law, but this is a very, very important bill. I commend everybody who has been involved in it.

Let me conclude by just thanking some people individually.

First of all, I thank TED STEVENS, who had very real hesitation about this bill. I thank PETE DOMENICI. Both of these men had real reservations when we started. This has meant a compromise for them, and I think, quite frankly, we have a better bill right now than we did when we started this process. I think they are largely responsible for it. But only because of their support will this bill become the law of the land.

I thank DAN COATS and JOHN MCCAIN for their leadership. This has been a battle which has really raged for 8 years. Many people have despaired of it ever happening. But it did happen because we had people who cared strongly about it. I think it reveals the basic lesson of democracy, and that is intensity counts. If you have people who care very strongly about something and they do not give up, ultimately they succeed.

I also thank the Presiding Officer, our distinguished assistant majority leader, for his good counsel in bringing people together and helping to push this matter to a final conclusion.

It is interesting in that I think this is an old issue which has been debated a long time and as a result there is not the clamor which normally would surround a bill that is as important and momentous as this bill is, and that is a disappointment I am sure both to those of us who are for it and those who are against it in terms of its profound impact on America. There are very few things we have done in the last 4 or 5 Congresses that have a larger potential impact than the passage of this bill.

I congratulate everybody who has been involved. I believe we are not only making history today, but we are making good history. That is something which does not happen very often. This is one more tool the President has, if the President wants to do something about the deficit. If we have a President who really wants to do it, all that President has to do is get one-third plus one in one House of Congress, sharpen up his pencil, and he is in business. I believe it is going to take strong leadership.

I wish to conclude by remembering the words of Ronald Reagan when he asked for this power and said, ''Give me the line-item veto and let me take the heat.'' I was always disappointed we did not do that, but we are going to give whoever is President in January this power. We will see if they can take the heat.

I thank the Chair and I yield the floor.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. Who seeks recognition? The Senator from West Virginia.

Mr. BYRD. Mr. President, I shall quote Lord Byron:

> A thousand years scarce serve to form a state; an hour may lay it in the dust.

Mr. President, let me explain my motion now for the benefit of Senators on both sides.

Mr. President, in offering this motion to recommit, I am, I hope, providing one last opportunity for the Senate to come to grips with what we are about to do. It is my desire that each one of us, before we cast our vote on the conference agreement to S. 4, have the chance to reevaluate our position, to rethink the damaging consequences that will necessarily extend from this enhanced rescission proposal, and to vote, instead, for a more sensible approach than that offered in S. 4, as amended.

In essence, my motion to recommit would supplant the provisions currently contained in the conference agreement with those contained in S. 14, as originally introduced by Senators DOMENICI, EXON, CRAIG, BRADLEY, COHEN, DOLE, DASCHLE, and CAMPBELL on January 4, 1995. That measure was, I believe, a workable proposal that would give the President broad and uncomplicated authority to propose the

rescission or repeal of not only appropriated funds, but, also, new direct spending and targeted tax benefits.

Consequently, my proposal will allow any President to rescind any of these budget items under an expedited process that guarantees the President will receive a vote on any of his proposed rescissions. The process would work as follows:

The President would have 20 calendar days after the date of enactment of each covered measure to transmit a special message to Congress proposing to cancel any of the budget items previously mentioned. The House and Senate would then be required to take up the President's proposed rescissions under expedited procedures which would ensure that a vote on final passage of the President's proposed rescissions shall be taken in the Senate and House of Representatives on or before the close of the tenth day of session of that House after the date of the introduction of the bill in that House.

Furthermore, procedures are contained in the measure to ensure that such measures are introduced no later than the third day of session of each House after receipt of a special message from the President.

During consideration of the rescission bill in either House, any member may move to strike any proposed cancellation of a budget item. I might note parenthetically that this represents a change from S. 14, as introduced, in that S. 14 would have required a member of the House to gather the signatures of 49 other members in order to offer an amendment to a rescission bill on the Floor and in the Senate would have required a Senator to collect an additional 11 signatures in order to be able to offer an amendment to strike a proposed rescission from a bill. I do not agree that members of the House and Senate should be prohibited from offering their amendments as they so wish without the necessity of gathering signatures from other members.

Under my proposal, debate in the Senate on a rescission bill and all debatable motions and appeals in connection therewith shall not exceed 10 hours. A motion in the Senate to further limit debate on a rescission bill is not debatable. A motion to recommit a bill is not in order. Debate in the House of Representatives or the Senate on any conference report on any rescission bill shall be limited to not more than two hours, motions to further limit debate will be nondebatable, and motions to recommit the conference report will not be in order.

Finally, my proposal contains an ironclad lockbox provision to ensure that any monies saved through these rescissions are, indeed, used for deficit reduction. Under this proposal, the President and Congress must each take action to reduce the discretionary spending limits contained in section 601 of the Congressional Budget Act, the committee allocations under section 602, and the balances for the budget under section 252 of the Balanced Budget and Emergency Deficit Control Act.

By adopting this proposal, I believe that the Senate will then have passed a measure that effectively amends the present impoundment procedure, while at the same time maintaining the constitutional separation of powers by protecting congressional control of the purse strings from an unchecked executive.

Mr. President, I remind my colleagues that it was the considered judgment of the distinguished chairman of the Budget Committee, working in conjunction with the ranking member of that committee, Mr. EXON, that the expedited rescission process contained in S. 14, as originally introduced, was the most appropriate approach to this issue. Based on their expertise—expertise gained through many years of study of the budget process—the provisions contained in the Domenici-Exon rescission bill give us a workable process. Consequently, my motion, if adopted, would force the Congress to vote, in an expedited fashion, on the President's rescission proposals. No longer would Congress be in a position to simply ignore the recommendations of the President. We would be mandated, under the language I am proposing to have substituted, to consider the President's request, and to do so in a timely manner.

Furthermore, under the terms of S. 14, as introduced, this newly crafted expedited rescission process would extend not only to appropriated funds, but, also, to the vast amounts of revenues lost each year through the use of tax expenditures. As with entitlement programs, tax expenditures cost the U.S. Treasury billions of dollars each year; nearly $500 billion in this fiscal year alone. And, again, like entitlements, they receive little or no scrutiny once they are enacted into law. Even though they increase the deficit, just like spending on mandatory programs, tax expenditures routinely escape any meaningful fiscal control or oversight. Indeed, by masquerading as a tax expenditure, a program or activity that could not pass congressional muster could be indirectly funded and survive for years.

Yet, the conference agreement on S. 4 effectively puts this entire area of Federal expenditures out of the reach of the President. By limiting the President's rescission authority to only those tax expenditures that, by definition, benefit 100 or fewer taxpayers, S. 4 absurdly restricts the ability of the President to get at this type of backdoor spending.

How absurd is this? Imagine limiting the scope of the President's rescission authority to those appropriations that impacted 100 or fewer beneficiaries. Imagine the wrath of verbal indignation that would befall any Senator who stood up here and proposed that kind of rescission process. What would the proponents of S. 4 think of the efficacy of their legislation with that type of restriction in place on appropriated funds?

Mr. President, the concept of numerical definitions on tax expenditures was rejected in the Senate because we all know that any tax lawyer worth his salt can find a few extra people to qualify for the targeted tax benefit, thereby bringing the number of beneficiaries above 100 and out of range of rescission authority. Consequently, this limitation is nothing more than an open invitation to the many creative tax attorneys in this country to find ways to abuse the system.

But the asininity of such a provision does not stop there. The definition of a tax expenditure, or ''limited tax benefit'' as S. 4 calls it, is further gutted with exemptions for tax breaks that serve to benefit all persons in the same industry, or all persons engaged in the same type of activity, or even all persons owning the same type of property. Thus, under that definition, a special tax break passed by the Congress for anyone owning a Rolls Royce, for example, would not be subject to a presidential rescission since everyone affected would own the same type of property, in this case a Rolls Royce.

Mr. President, I find it ironic that the proponents of S. 4—who seem to be claiming that their so-called line-item veto is the only version that will effectively cut wasteful spending—are the very same people who seem to be afraid to give the President of the United States a similar method of cutting wasteful tax breaks. Why should the President be given the power to veto spending for school lunches, or highway construction, or drug programs, and not be given the power to veto the tax deduction claimed by businessmen for a three-martini lunch? Whether wasteful spending is in a program funded through an appropriation or through a tax break, it is still wasteful spending.

The Domenici-Exon expedited rescission bill, which I am offering as a substitute to the current conference agreement, gives the President real authority to go after wasteful tax breaks. Under the substitute, every tax break would get the same presidential scrutiny as every program funded through the appropriations process. No more, but certainly no less.

Finally, but not insignificantly, Mr. President, is the issue of timing. The rescission process that I am proposing is immediate. It is not put off until next year. It is not delayed until 1997, as it is under the conference agreement. Under the substitute, the President would have the opportunity to exercise his newfound rescission powers right away, this year, on any appropriations, or entitlements, or tax expenditures enacted by this Congress. But, under the conference agreement, the President—in this case President Clinton—is not allowed to affect the fiscal year 1997 appropriations. Apparently, President Clinton is not to be

trusted with this new power. Apparently, the hope of the proponents of the conference agreement is that, after 1996, the White House will be under Republican control. Apparently, what is good for a possible Republican President is not so good for a President for the Democratic party.

Mr. President, my position on enhanced rescission is well known to my colleagues. I believe that passage of this conference report, in its present form, would be a truly monumental mistake that will do great harm to the constitutional balance of powers while contributing very little toward balancing the federal budget. I have been, and continue to be, unalterably opposed to granting any President the power to rescind portions of spending measures under conditions which would require a two-thirds vote of both Houses to override such rescissions.

But if we are to have legislation that amends the current rescission process, I hope that we will at least have the presence of mind to ensure that we do not give away, in wholesale fashion, that which the constitutional Framers so wisely placed in this branch of government. Accordingly, I urge my colleagues to adopt my motion to recommit.

The PRESIDING OFFICER (Mr. MCCAIN). Who seeks recognition?

Mr. BYRD. Mr. President, I ask the time be charged against my time on the amendment.

The PRESIDING OFFICER. The time will be so charged. The Senator from Indiana is recognized.

Mr. COATS. Mr. President, I, first of all, want to take this opportunity to express my respect for the Senator from West Virginia. We clearly are on different sides of this issue. He has been an articulate and zealous protector of the prerogatives and rights of this institution, and he has articulated those well, and I respect that.

I also respect his unswerving allegiance and dedication to that proposition and know that it is very, very important, and it has been over the 8 years of debate on line-item veto, a great history lesson for this Senator.

Mr. BYRD. Mr. President, I thank the distinguished Senator for his overly generous and charitable remarks.

Mr. COATS. Mr. President, it is my understanding that it has been cleared that we could move to a vote at 5:45, to have Senator DOMENICI recognized in order to make a motion to table the pending motion to recommit.

I want to make sure the minority leader and Senator BYRD—if that is his understanding?

Mr. BYRD. That is my understanding. I have no objection. I ask the request be amended to provide that Mr. MOYNIHAN be recognized at 5 o'clock to speak in opposition to the conference report, and the time to be charged against my time on the bill.

UNANIMOUS-CONSENT AGREEMENT

Mr. COATS. We have no objection to that, Mr. President. Therefore, I ask unanimous consent that at the hour of 5:45 this evening, Senator DOMENICI be recognized in order to make a motion to table the pending motion to recommit, and, prior to that, at 5 p.m. this evening, Senator MOYNIHAN of New York be recognized to speak in opposition—in favor of the motion to recommit and in opposition to the bill on the floor, the time to be charged to the Senator from West Virginia.

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

Mr. COATS. Mr. President, I would just alert our fellow Senators that a rollcall vote will now occur at 5:45 p.m. today; that there will still be, after that vote, time remaining on this debate. I am not sure how much of that time will be used. I do know there are some requests for time, so Senators should also expect that there will be additional debate and a vote on final passage on this line-item veto conference report sometime this evening.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. Mr. President, I would like to request some time on this side. I think 5 minutes will be adequate.

Mr. COATS. Mr. President, I am happy to yield to the Senator from Mississippi whatever time he desires.

The PRESIDING OFFICER. The Senator from Mississippi is recognized.

Mr. LOTT. Mr. President, I want to say this afternoon I am extremely proud of the U.S. Senate and of the Congress, because I believe before this week is out we will have passed this already described momentous legislation into law. It is not an easy thing to do. It is very difficult.

I remember, soon after I came to the Senate, we had debate on the line-item veto. I think probably the Senator from Indiana and the Senator from Arizona, Senator MCCAIN, were involved in it then. I made some comments, and I had a couple of Senators come over and explain to me that might not be a good idea, to support that. They caused me to think a lot about it.

But here, in effect, we are taking action against our interests. This is a fundamental change; there is no denying it. The Senator from West Virginia is right; the Senator from Alaska. Yet, we are going to do it because, first, I think, we have come up with better legislation than we had 7 years ago, or earlier this year.

We have improved it. We have made it more acceptable to more Senators or Congressmen, Republicans and Democrats. So we are going to go forward with it, and we are going to do it at a time when the majority of the Congress is not of the party of the President in the White House. We are saying that in spite of that—maybe because of it—we want him to have this additional authority.

For 15 years, we have been talking about the line-item veto, maybe longer. But I personally have been familiar with it for those years. As a Member of the House, I was for the line-item veto. I remember making speeches when President Carter was in the White House, and I continued to be for it during the Reagan administration, the Bush administration, and I continue to be for it.

So I think we are showing that we can rise above politics, if you will—partisan politics—and take an action because we believe it will be the right thing to do for our country, we believe it will be the right thing to do in trying to help control spending. It may not work like we hope it will, it may run into difficulties, but I believe it is the right thing to do, and I do support it.

I think that it will be used responsibly by the Presidents of the United States, this one or his successors. I think most Governors use it responsibly in their exercise of the line-item veto, and I think the Presidents will. But if they do not, we will have another opportunity to address it.

I do also want to join in commending the Senator from Arizona, Senator MCCAIN, for his dogged support of this idea, and also the Senator from Indiana. They have worked together. They have worked against overwhelming odds and never gave up, even though it looked pretty dismal just a month or so ago.

I have to express my appreciation for Senator STEVENS and Senator DOMENICI. They were aggressive, they were active, but they were involved. I remember I had been talking with the Senator from Alaska one night about what we had been trying to do, and he had been very aggressive in saying how he did not want us to do that. He had worked me over from three or four different angles trying to educate me. Then I said, ''OK, I understand you don't want it. Is there a solution?'' He stopped and said, ''Well, maybe there is.''

So we worked together. Even the Senator from West Virginia, who so opposes this legislation, has been very much a gentleman in the way he has handled the debate, how he is addressing this issue today, the motion to recommit he has offered, and the time agreements he has entered into. So a lot of people deserve credit.

I think it is a carefully crafted piece of legislation. We went into the detail of what would it mean for the President to be able to veto in whole or in part. Quite frankly, we were a little bit surprised—I know I was—at what that could mean. So we worked to try to clarify what that ''in part'' meant.

It does include things other than just appropriations. It does include the so-called tax expenditure. But that provision is carefully drafted, it is carefully defined, and I think we came up with the right blend, so that also can be considered by the President when he reviews legislation we send to him.

We were very careful in deciding what to do on the sunset. There was a lot of argument that we should have no sunset, and there were others who said,

and I kind of agreed, ''Look, this is big legislation, important legislation, it may not work out correctly. It may be abused. So after a certain period of time, let's be allowed to take a look at it.''

I think it will work correctly. I hope it will be extended. I hope to support to extend it when the time comes.

We even talked a lot about the effective date. We wanted to make sure it was going to be handled in such a way it would go into effect as soon as possible. We do have a provision that says if we reach a balanced budget this year, it will go into effect on that date, or January 1, 1997, whichever is earlier. The President and the majority leader talked about that and agreed that was the fair way to do it.

I think we have done what we said we were going to do. I have always felt the President should have this authority. I am in the Congress. I guess I should be jealous of ceding authority to the President, but I really do feel the President should have this authority. We can only have one Commander in Chief at a time. He is the ultimate authority. He should have the ability to go inside a bill and knock out things that are not justified, that have not been sufficiently considered, that cost too much—whatever reason—without having to veto the whole bill.

I am very pleased this afternoon to rise on the floor of the Senate and commend the Senate for what I believe will be their action today and all those associated with this effort. I think it is the right thing to do. I believe it will help save some of our children's tax money in the future.

I yield the floor, Mr. President.

The PRESIDING OFFICER. Who yields time?

Mr. BYRD. Mr. President, I yield to the distinguished Senator from Michigan [Mr. LEVIN], 30 minutes.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. I thank the Chair.

Mr. President, first, let me thank our friend from West Virginia. He has already been told this afternoon by so many of us just how important he is to the Nation and to the U.S. Senate in the cause he is fighting and the many causes he has fought and continues to fight for in this body. Many of the accolades, indeed, have come from people who are on the other side of this issue from him, but I want to let him know, as someone on the same side of this issue as he is, we, too, feel particularly keenly about the leadership that he has exerted on this issue and so many other issues involving the Constitution of the United States.

This is our bedrock document, a fundamental document. It has no more staunch supporter of the Constitution in this body or in this country than Senator BYRD, and I just want to add my voice to those of so many others in this body on both sides of this issue in gratitude for the labor that he has given to this Constitution. From his perspective, I know they are not labors because they are labors of love.

Mr. BYRD. Mr. President, the Senator from Michigan is a man of great tenacity and perception and love for the Constitution and for him to deliver remarks on my behalf, he certainly has brightened my day. I am very grateful.

Mr. LEVIN. Mr. President, while we are expressing sentiments about each other personally, before I get into my remarks on this bill, which I oppose for reasons I will set forth, I want to add my thanks also to the Presiding Officer and the Senator from Indiana, who is managing the bill, and to others on the other side of this particular issue for the manner in which this debate has proceeded.

It is a very significant debate, and people on both sides of this issue feel very keenly about it. I think there is unity in terms of trying to find a form of line-item veto, so-called, which is constitutional, because whatever side of the particular bill we are on, as to whether we think this version is constitutional or not, I think most of us would like to find a formula which would give the President greater power to identify issues in bills, items in bills which he feels should be separately voted upon, which should be highlighted for the public, for the Congress, and we should then vote up or down on.

I, for instance, very much favor the version which the Senator from West Virginia has offered, which will be voted upon later this afternoon. That so-called expedited rescission process, it seems to me, is constitutional and is something which we can in good conscience, at least I can in good conscience, support.

The Presiding Officer and many others in this body obviously feel that the version which is currently before us is constitutional or I do not think they would have been proposing it. There is a difference on this issue, but it is a difference which is held in good faith. I must say, I greatly admire the Senator from Arizona and the Senator from Indiana and others for the manner in which they have proceeded relative to this issue.

Mr. President, as I said, I support the version of the line-item veto which is known as expedited rescission. That version would ensure that any item of spending which is enacted by the Congress that the President believes to be inappropriate would, in fact, have a separate congressional vote.

That approach to the line-item veto would make it impossible to hide questionable spending in massive appropriations bills. That is one of the goals of the sponsors of the version that is before us. It is to make it impossible to hide questionable spending in these massive appropriations bills.

Senator BYRD's version—the expedited rescission approach —also will make it impossible for these kinds of items to be hidden by a Congress because it would require and ensure a separate congressional vote on any item of spending that the Congress enacts that the President feels is inappropriate.

The problem with the current bill is that it fails the fundamental test of being consistent with the requirements of the Constitution that any repeal or amendment to a law be enacted in the same way that the law itself was enacted. The Constitution establishes the method by which laws are enacted, by which laws are amended, and by which laws are repealed. It is fundamental constitutional law. It is basic, bedrock law that says that a bill becomes law when it is passed by both Houses of Congress and signed by the President, or if the bill is vetoed by the President, when that veto is overridden by a two-thirds vote in each House.

The bill before us purports to create a third way by which laws can be made, a way not recognized in the Constitution. And this third way, this new way, is by giving the President the unilateral power to repeal a law or part of a law without any action by the Congress.

The Founding Fathers made a conscious decision to give the power of the purse to the Congress and not to the President. This power of the purse serves an important check on the power of the Presidency. It is, in fact, a crucial element in the system of checks and balances which was established by the Founding Fathers. These checks and balances are not a mere abstraction; they were expressly written into the Constitution to protect our freedom.

James Madison warned in Federalist No. 47 that—

> There can be no liberty where the legislative and executive powers are united in the same person.

He quoted Montesquieu for that point. It was because of that, the fear of uniting executive and legislative powers in the same person, that article I of the Constitution gives Congress, and not the President, the power of the purse.

Article I, section 1, states without qualification—and the first word in this quote is the critical one—

> All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Article I, section 8 adds:

> The Congress shall have Power To lay and collect Taxes, . . . to pay the debts and provide for the common Defense and general Welfare of the United States; . . . [and] To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Article I, section 9 affirms that:

> No money shall be drawn from the Treasury, but in Consequence of Appropriations made by law.

It was Madison, in Federalist No. 58, who explained that the power of the purse was granted to Congress because

it represents the ''most complete and effectual weapon with which any Constitution can arm the immediate representatives of the people for obtaining a redress of every grievance and for carrying into effect every just and salutary measure.''

Congress cannot change the system of checks and balances established by the Founding Fathers. We cannot do it, and we should not try. But this conference report, in the mechanism which it chooses, attempts to change the system of checks and balances which are embedded—and may I use the word ''enshrined''—in the Constitution of the United States.

The enhanced rescission power that is granted to the President by this bill attempts to alter our constitutional system by giving the President unilateral authority to control spending and to substitute his personal budget priorities for the priorities that have been passed by the Congress and signed into law. This bill would give the President the unilateral power to repeal a statute or part of a statute without any action at all by the legislative branch.

That is the heart of the matter. This bill in front of us would give to the President the unilateral power to repeal a statute or part of a statute, the law of the land, without any action by the legislative branch. That is something that we cannot do.

The Supreme Court said as recently as in the Chadha case, that it is beyond Congress' power to alter the carefully defined limits and the power of the branches. This is what the Supreme Court said in Chadha:

> The bicameral requirement, the Presentment Clauses, the President's veto, and Congress' power to override a veto were intended to erect enduring checks on each Branch and to protect the people from the improvident exercise of power by mandating certain prescribed steps. To preserve those checks, and maintain the separation of powers, the carefully defined limits on the power of each Branch must not be eroded.

The Chadha court went on to say:

> There is no support in the Constitution or decisions of this Court for the proposition that the cumbersomeness and delays often encountered in complying with explicit constitutional standards may be avoided, either by the Congress or by the President. . . . With all the obvious flaws of delay, untidiness, and potential for abuse, we have not yet found a better way to preserve freedom than by making the exercise of power subject to the carefully crafted restraints spelled out in the Constitution.

The veto or the repeal or the cancellation, unilaterally, of an existing law by the President is subject to the same constitutional restraints.

The Chadha court explicitly stated that ''[a]mendment and repeal of statutes, no less than enactment, must conform with Article I'' of the Constitution.

That is an explicit statement of Chadha by the Chadha court. We cannot change that unless we adopt a constitutional amendment and send it to the States.

The Chadha court has told us what courts have told us throughout our history, what the Constitution has told us. It says explicitly, ''[a]mendment and repeal of statutes, no less than enactment, must conform with Article I'' of the Constitution.

What this bill says is, ''Well, we will try to create something else. We will let the President decide within 5 days after a law becomes law that he wants to cancel a part of that law.'' Unless the Congress acts to override him, the President's unilateral cancellation effectively amends the law of the land. We cannot do that. We should not try.

The Chadha court explained why it reached the conclusion that it did. It wrote that during the Convention of 1787 the application of the President's veto to repeals of statutes was addressed. It was very explicitly addressed during the Constitutional Convention. The Chadha court went through the Convention. The issue was the application of the President's veto to repeals of statutes. The Chadha court concluded, ''There is no provision allowing Congress to repeal or amend laws by other than legislative means, pursuant to article I.''

Now, Mr. President, the conference report acknowledges what I think is obvious: That when the President signs the appropriations bill—this approach would allow him to cancel within 5 days that appropriations bill—upon his signature that becomes the law of the land. The conference report, section 1021 says that notwithstanding the provision of parts A and B and subject to provisions of this part, ''the President may with respect to any bill or joint resolution that has been signed into law, pursuant to article I, section 7 of the Constitution, may cancel in whole or in part,'' and it goes on to talk about what the President can cancel.

We are only talking here about bills which have become the law of the land. Those are pretty important words in this government of law. We do not allow Presidents to pick and choose which laws they abide by and which ones they do not. I cannot think of any other places where we say a law could be canceled by a President acting unilaterally; yet this bill says that a law—and that has become enacted, signed by the President—can be canceled in whole or in part by the President, acting alone.

Of course, the bill gives us the opportunity to override that cancellation with new legislation. That is not the point. That is not what article I of the Constitution provides. Article I of the Constitution as interpreted by Supreme Court opinion after Supreme Court opinion as recently as Chadha says the repeal, the amendment, the modification of a law must be done in the same way that a law is enacted. This bill is a deviation from that. This bill says ''Well, we will create another way. We will create a new way. You do not have to enact an amendment. You do not have to adopt an amendment. You do not have to repeal the law the way the Constitution provides. We're going to say that the President of the United States, acting alone, is able to cancel a law of the United States.''

Now, Mr. President, the argument has been made that the bill just restores to the President the authority that he exercised prior to the enactment of the Impoundment and Control Act in 1974. That is plainly wrong. No President has ever exercised the kind of unrestrained right to override congressional budget decisions that this bill would attempt to create. The Assistant Attorney General, Charles Cooper, in the Reagan administration, stated in a 1988 legal opinion, the following:

> To the extent that the commentators are suggesting that the President has inherent constitutional power to impound funds, the weight of authority is against such a broad power. This office has long held that the existence of such a broad power is supported by neither reason nor precedent. Virtually all commentators have reached the same conclusion without reference to their views as to the scope of executive power.

I note that same Assistant Attorney General, Charles Cooper, in the Reagan administration, cited no less an authority than Chief Justice Rehnquist, writing in his position as Assistant Attorney General in the Nixon administration, for the proposition that a Presidential power not to spend money ''is supported by neither reason nor precedent.''

The Constitution does not authorize this version of a line-item veto. The Constitution does not permit the President to repeal a law, to suspend a law, to ignore a law, unless he chooses to veto the law itself. He cannot cancel laws. This is just another word for modifying it or ignoring it or vetoing it.

George Washington said 200 years ago, ''From the nature of the Constitution I must approve all the parts of a bill or reject it in toto.''

Former President and Chief Justice William Howard Taft explained, ''The President has no power to veto parts of the bill and allow the rest to become a law. He must accept it or reject it, and even his rejection of it is not final unless he can find more than one-third of one of the Houses to sustain him in his veto.''

Congress cannot give the President that authority or even greater authority simply by changing the labels and calling a repeal or an amendment the ''cancellation'' of a law. It is not the labels that count. It is the substance of what we are doing or purporting to do. What we are purporting to do in this bill is to give the President of the United States unilaterally a right which the Constitution denies him, and that is the right to cancel or veto or amend or modify or ignore the law of the United States.

If it is unconstitutional for Congress to give the President a particular power under one label, it is not suddenly constitutional merely because we change the label. We cannot acknowledge that the President does not have

the right to ''modify'' or ''repeal'' a law under the Constitution, but at the same time maintain that he can ''cancel'' a law. A veto is no less a veto and a repeal is no less a repeal because we call it suspension or cancellation.

As a matter of fact, the Random House dictionary defines a veto as ''The power vested in one branch of a government to cancel the decisions, enactments, et cetera, of another branch.'' To paraphrase the statement of Senator Sam Ervin on a similar issue in 1973, ''You can't make an onion a flower by calling it a rose.''

Now, it is argued by some that this bill is a constitutional delegation of power because the President is simply exercising some legislatively authorized discretion not to enforce a statutory provision. By this reasoning, the appropriation that has been canceled is still law. But I do not believe that is the intent of the sponsors. The bill itself is entitled the ''Line-Item Veto Act.'' The bill creates a new part of the Congressional Budget Act entitled, ''Part C, Line-Item Veto.'' The first provision of this new part is entitled, ''Line-Item Veto Authority.''

Now, in addition, the so-called discretion in this conference report only operates in one direction. Once a President cancels an appropriation under the bill, neither that President nor any other President would be permitted to spend the appropriated money without the enactment of new legislation.

When a President cancels a provision of law providing for direct spending, this bill provides that the provision shall have no legal force or effect. The bill expressly states in section 1026(4)(b) that the term ''cancel'' means, in the case of budget authority provided by law, to prevent such budget authority from having legal force or effect. That is right in the bill itself. There is no discretion that is being granted here to the President. There is only one-way discretion here, which is to cancel a provision of law and deprive it of legal force and effect in perpetuity.

Similarly, in the case of entitlement authority, the bill states that a cancellation ''prevent[s] the specific obligation of the United States from having legal force or effect.'' The whole purpose of this bill is to deny the legal force or effect of any part of an appropriation that the President has canceled. In the case of the Food Stamp Program, the bill says its purpose is to ''prevent the specific provision of law that results in an increase in budget authority or outlays for that program from having legal force or effect.''

Now, Random House defines the term ''cancel'' to mean, ''make void, to revoke, to annul.'' I think we would all agree that any bill that purported to authorize the President to unilaterally void or annul or revoke a statute would be unconstitutional.

Can the result be different because, instead of calling it a repeal or an annulment, we call it a cancellation? Can the application of the label ''cancel'' to what is clearly a repeal and an annulment change the outcome legally? I do not think so.

The bottom line is that this bill purports to grant to the President of the United States a unilateral authority, which the Constitution will not allow him to have or us to grant to him; that is, the authority to repeal a law without any action by Congress.

Chadha says that you cannot repeal or modify a law without any action by Congress. The Constitution says it. We cannot do —and we should not attempt to do—what the Supreme Court says cannot be done and which the very logic of the Constitution says cannot be done.

Assistant Attorney General Cooper, again in the Reagan administration, explained this in his legal memorandum on impoundment. He said that because an inherent impoundment power would not be subject to the limitations on the veto power contained in article I, clause 8, an impoundment would, in effect, be a superveto with respect to all appropriations measures. The inconsistency between such an impoundment power and the textural limits on the veto power further suggests that no inherent impoundment power can be discovered in the Constitution.

The same conclusion must be reached with regard to the cancellation power which is proposed in this conference report. Like an inherent impoundment power, cancellation of a provision would, in effect, be a superveto, going far beyond the veto power given to the President in the Constitution, because the President would not be required to veto the entire bill. Congress cannot, by statute, give the President powers that were denied to him in the Constitution.

As Prof. Thomas Sargentich of the Washington College of Law at American University explained in a March 13, 1995 letter to me, regarding an earlier version of this bill which took the same approach:

> S. 4 presents the question whether, given that the President cannot unilaterally rewrite or delete some portion of a bill at the time of presentment, the President nevertheless can sign the bill and decide thereafter to rescind budget authority under the law. Proponents of S. 4 seek to rely on a verbal contrast between ''rescission'' of budget authority and ''repeal'' or ''veto'' of all or part of a statute. The notion is that a 'rescission' is simply the execution of the law pursuant to a broad delegation.
>
> The problem with this suggestion is that it seems to exalt verbal form over legal substance. * * * A repeal of all or part of a statute after it becomes effective can only be accomplished by new legislation enacted with adherence to bicameralism and presentment. Using words like ''suspend'' or ''rescind'' or any other somewhat muted verb does not alter the underlying legal situation.

Similarly, Louis Fisher of the Congressional Research Service concluded in 1992 testimony before the House Rules Committee that a statute purporting to give the President unilateral power to rescind an appropriation would be unconstitutional. Dr. Fisher stated:

> Under what theory of government can Congress delegate to the President the power to rescind laws without further legislative involvement? Congress regularly delegates to the President substantial authorities to 'make law,' but this consists of discretion within the bounds of statutory law, not the power to terminate law. * * * Even if contemporary case law sustains the constitutionality of broad delegations, I would argue that the rescission of previously appropriated funds requires action through the regular legislative process: action by both Houses on a bill that is presented to the President.

And, a 1987 Note in the Yale Law Journal concludes unequivocally that—

> A transfer of authority to the President [through an enhanced rescission bill] to decide which parts of appropriation bills to enforce, would be a delegation of Congress' spending power. Such a delegation, however, would be unconstitutional. * * * Congress cannot constitutionally seek to solve its budget problems by attempting to divest itself of its constitutionally assigned powers.

Mr. President, I am confident that the courts will strike this provision down as an improper attempt by Congress to override the explicit standards, in article I of the Constitution, for the enactment and repeal of legislation. However, I do not believe that we should rely upon the courts to strike down unconstitutional statutes; we have an independent duty to scrutinize our actions and reject any proposal that would violate the strictures of the Constitution.

It has been argued that the end of hope for deficit reduction justifies the means.

The line-item veto has been cast as a mechanism to cut wasteful spending by Congress.

The premise has been weakened by the fact that the Presidents' budgets during most of the Reagan-Bush years had greater deficits than the budgets adopted by the Congress.

Also numerous studies show that State line-item veto provisions, rather than reducing spending, have been used for partisan, political purposes. CBO Director Robert Reischauer testified before the Governmental Affairs committee that:

> Evidence from the states suggests that the item veto has not been used to hold down state spending or deficits, but rather has been used by state governors to pursue their own priorities....[A] comprehensive survey of state legislative budget officers found that governors were likely to use the item veto for partisan purposes..., but unlikely to use the veto as an instrument of fiscal restraint.

The same is likely to be true at the Federal level. For example, a President could push his agenda in Congress by threatening to use a line-item veto or enhanced rescission authority to kill projects in the State or district of a Member who opposed his proposals. Such threats could be used to advance policies in area—such as health care and welfare reform—that are completely unrelated to Federal spending. They could even be used to persuade

Congress to increase Federal funding for projects favored by the President.

But even if one believes line-item veto will have a major impact on the deficit, then do it constitutionally. That is what the Byrd motion is all about. We should not do it by trying to give the President a part of the power over the purse, a power the constitution reserves to the Congress. We should not do it by trying to give the President the right to repeal a law or a portion of a law without congressional involvement.

The sponsors of the bill have taken the position that Presidents are unlikely to abuse these new powers. That view is not only naive, it is also inconsistent with the view of our Founding Fathers and the purpose of our constitutional system of checks and balances. As James Madison explained in ''Federalist Number 51'':

[The great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department, the necessary constitutional means, and personal motives, to resist encroachments of the others. . . . If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controuls on government would be necessary.

Moreover, as Justice Frankfurter pointed out in the wake of our battle against dictatorship in the Second World War, the road to tyranny may be paved with the best of intentions. Writing in the so-called Steel Cases overturning President Truman's attempt to take control of steel mills, Justice Frankfurter states:

[The Founders] rested the structure of our central government on the system of checks and balances. For them the doctrine of separation of powers was not mere theory; it was a felt necessity. Not so long ago it was fashionable to find our system of checks and balances obstructive to effective government. It was easy to ridicule that system as outmoded—too easy. The experience through which the world has passed in our own day has made vivid the realization that the Framers of our Constitution were not inexperienced doctrinaires. These long-headed statesmen had no illusion that our people enjoyed biological or psychological or sociological immunities from the hazards of concentrated power. It is absurd to see a dictator in a representative product of the sturdy democratic traditions of the Mississippi Valley. The accretion of dangerous power does not come in a day. It does come, however slowly, from the generative force of unchecked disregard of the restrictions that fence in even the most disinterested assertion of authority.

Much will no doubt be made in the course of this debate of the fact that the President supports this bill of course. Every President would like Congress to hand over part of its power over the purse.

I would point out however that former Counsel to the President—the President's own counsel—has parted company with the President on this issue. In a March 25, 1996, column in the Legal Times, Abner Mikva wrote that line-item veto proposals not only raise constitutional problems, but would also transfer excessive power to the President. Judge Mikva has been consistent, and convincing, on this issue. Back in 1986, Judge Mikva wrote, in the University of Georgia Law Journal:

[T]he source of almost all congressional power—the spine and bite of legislative authority—lies in Congress' control of the nation's purse. If ever Congress loosens its hold on this source of power or if ever the President wrests it away, then, to quote the late Senator Frank Church, ''the American Republic will go the way of Rome.'' The delicate balance created by the Framers will have been destroyed.

* * * * *

Since 1873, when Ulysses Grant first proposed the idea, over 150 legislative proposals have called for Congress to give to the President the ability to veto individual parts of a bill. Congress has thus far rejected such proposals; with any luck, it always will.

For regardless of whether Congress yields budgetary authority or the President usurps it, the threat to our constitutional order is the same. In our governmental system, the legislature does and must have plenary power over the budget. The power of the purse is the strength of the Congress; take that away, and all else will fall. Is Congress' management of the budget inefficient? Surely it is; the workings of democratic institutions always are. Is it cumbersome? Of course it is; getting a majority of 535 political prima donnas to agree on anything is a difficult task. But if we wish to live in a pluralistic and free society, we will strive to ensure that Congress retains exclusive control of the nation's purse. Only in that event will the delicate balance of our constitutional structure be preserved.

Mr. President, this bill is an unwise attempt to give away Congress' power over the purse and undo the system of checks and balances created by our Founding Fathers. It is at odds with the requirements of the Constitution. I urge my colleagues to reject it and adopt a different version called expedited rescission.

Mr. MCCAIN. Mr. President, we were sort of going back and forth from one side to the other. Since Senator LEVIN just went, Senator ROTH was going to go and, then, I understand Senator DASCHLE will go. I believe that is the normal custom.

Mr. BUMPERS. Mr. President, I wonder if the floor manager would be willing to enter into a unanimous-consent agreement specifically naming the order of those who were here on the floor so others will know approximately when to come to the floor.

Mr. MCCAIN. I note the presence of the Senator from West Virginia. I hope that is agreeable with him.

Mr. BUMPERS. I defer to our leader there, Senator BYRD, with how to approach this.

Mr. BYRD. Under the circumstances, I would be willing to do that. I am ordinarily not willing to stray away from what the rules require, but I would be happy to do that on this occasion.

Mr. BUMPERS. I suggest that Senator ROTH be recognized next, following which Senator DASCHLE be recognized.

Mr. DASCHLE. Well, Senator BUMPERS has been here longer than I have.

Mr. BUMPERS. I do not mind yielding to the leader. He has a much busier schedule than I do. Who would be next on that side?

Mr. MCCAIN. I am not sure at this time whether it would be Senator NICKLES or Senator KYL.

Mr. BUMPERS. And then it would come back to me?

Mr. MCCAIN. Yes, then the Senator from Arkansas.

Mr. BUMPERS. Does the Senator from Maryland wish to speak on this issue?

Mr. SARBANES. How long do we expect people to speak if we set up this procedure?

Mr. MCCAIN. I say to my friend from Maryland that usually about this time of the afternoon and evening we find there are a lot of speakers.

The PRESIDING OFFICER. The Chair notes that Senator MOYNIHAN is to be recognized at 5 o'clock.

Mr. MCCAIN. Yes, by previous unanimous consent, and there is a vote under a previous unanimous consent at 5:45.

Mr. BUMPERS. Is a certain time allotted to Senator MOYNIHAN?

Mr. BYRD. It is 30 minutes, I believe.

Mr. MCCAIN. I ask the Chair, how much time does Senator MOYNIHAN have? Is there a certain amount of time?

The PRESIDING OFFICER. No time was allotted.

Mr. BYRD. Mr. President, I yield 30 minutes to Mr. MOYNIHAN.

Mr. MCCAIN. At 5:45 is a vote to table the Byrd motion to recommit, under a previous agreement.

Mr. BYRD. So, between now and 5, there is time for several Senators.

Mr. MCCAIN. Mr. President, I yield 15 minutes to the Senator from Delaware, Senator ROTH.

Mr. NICKLES. Will the Senator yield to me briefly?

Mr. MCCAIN. Yes.

Mr. NICKLES. Mr. President, I rise today in strong support of the Line-Item Veto Act. The final Senate consideration and passage of this historic legislation is the result of years of hard work on the part of many of my colleagues.

I particularly wish to congratulate Senator MCCAIN and Senator COATS, who have dedicated so much of their time and energy to this initiative. In recent years, they have taken up this cause which was so actively pursued in the past by Senator Mattingly, Senator Evans, and Senator Quayle.

My colleagues have shown great courage over the years in continuing to bring this issue to the floor of the Senate. They did this at some political risk, yet they did not waiver. They believe in this issue, and I think they are right.

I believe the line-item veto is vitally important, Mr. President. It will save money, and right now we are spending too much and our budget process does not work very well. The line-item veto is certainly not a panacea for all our

budget problems, and it will not balance the budget. But it will help.

According to the Library of Congress, at least 10 Presidents since the Civil War have supported the line-item veto, including Presidents Grant, Hayes, Arthur, Franklin Roosevelt, Truman, Eisenhower, Nixon, Ford, Reagan, and Bush. Further, 43 of 50 State Governors have some form of line-item veto authority.

At its essence, this is a debate over checks and balances. Right now, we are writing a lot of checks, and there are few balances. Congress spends the money, and the President has two options. One, he signs the bill, or two, he vetoes the bill.

Historically, the balance of spending power between the executive and legislative branches of Government has varied considerably. Prior to 1974, several Presidents impounded congressionally directed spending, and Congress had little recourse.

According to the Congressional Research Service, the first significant impoundment of funds occurred in 1803 when President Thomas Jefferson refused to spend $50,000 appropriated by Congress to provide gunboats to operate on the Mississippi River. President Grant impounded funds for harbor and river improvement projects in 1876 because they were of a local interest rather than in the national interest. President Roosevelt impounded funds during the Great Depression and World War II, and in the 1960's President Johnson withheld billions of dollars in funding for highway projects.

This conflict came to a head in the 1970's when President Nixon impounded over $12 billion for public works housing, education, and health programs. Nixon's action led to the enactment of the Congressional Budget and Impoundment Control Act of 1974. Under this legislation, Congress eliminated the President's impoundment authority in exchange for establishing its own budget process.

Under the Congressional Budget Act, the balance of spending power is now significantly in Congress' favor. The President may now propose rescissions of appropriated funds, but Congress is not obligated to consider them. The General Accounting Office reports that from 1974 to 1994, Presidents have proposed 1,084 rescissions of budget authority totaling $72.8 billion. Congress has adopted only 399, or 37 percent, of the proposed rescissions in the amount of $22.9 billion. Congress has also initiated 649 rescissions totaling $70.1 billion, but most of these rescissions have been used to offset other Federal spending.

Mr. President, I have served on the Appropriations Committee. They probably work as hard as any committee in the Senate, and they are responsible for spending a little over $500 billion, about a third of what the Government spends right now.

For the most part, they do an excellent job with the annual appropriations bills and supplementals, but I can tell you from experience that every single appropriations bill has had items in it that we do not need and we cannot afford. The line-item veto will give the President the ability to strike those items that we cannot afford. We may or may not agree with him. If we disagree, we can try to override his veto.

Mr. President, I think it is important to note that this line-item veto will impact not only appropriated spending, but also new entitlement spending and limited tax benefits. We all know it is the outrageous growth of entitlement spending that is causing our deficit problems, so I think it is a significant step to give the office of the President more authority to control the growth of these programs.

Mr. President, again, I compliment my colleagues, particularly Senator MCCAIN and Senator COATS, for their leadership. They have taken this issue on year after year, many times at considerable economic and political pain. I compliment them for their courage, and I am proud of their success.

The line-item veto is a significant accomplishment for the 104th Congress, but I continue to hope that it is not our most significant accomplishment. It is with no small degree of frustration that I note that President Clinton and the Democrats killed the constitutional amendment to balance the budget, they killed the Balanced Budget Act, and they killed welfare reform.

When President Clinton campaigned on a line-item veto in 1992, he claimed that he could reduce spending by $9.8 billion during his term. I wish we could have given it to him earlier, since spending has actually increased during his term so far. Even more amazing is that right now, in some room in the Capitol building, the President's aides are insisting on spending $8 billion more this year.

Mr. President, I hope the line-item veto is not our most significant budget accomplishment this year, but even if the President continues to block our other initiatives, this legislation will stand out as a shining example of our success.

Mr. BYRD. Mr. President, I yield 30 minutes to Mr. BUMPERS and 30 minutes to Mr. SARBANES at such time as they are recognized.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

Mr. ROTH. Mr. President, today the Senate turns to the conference report on the line-item veto legislation. This legislation would provide for enhanced rescissions procedures to allow the President to cancel new items of direct or entitlement spending, appropriations, and limit the tax benefits; in sum, virtually all Government expenditures.

Mr. President, while I do support the conference report and believe in the intent of the legislation, I am concerned about the way the legislation affects tax provisions. Let me first outline my views regarding the underlying conference report, and then I will turn to the troublesome language regarding taxes.

Let me be clear that I believe that the line-item veto will not solve our deficit problem. In fact, it will be used as a tool to help trim Federal spending. We all know, that we need every possible tool to help reduce Federal spending.

This is a very important issue that was contained in the Contract With America. The Republican-led Congress continues to keep its promises to the American people in passing legislation that will help reduce Government spending, the budget deficit, and the debt burden on our children. In the Senate's first joint hearing with the House on the issue in January 1995, before the Governmental Affairs Committee, Dr. Alice Rivlin, Director of the Office of Management and Budget asked that the Congress provide the ''strongest possible line-item veto power to the President'' I agreed with Dr. Rivlin's statement. Congress has acted and will now give the President a very strong version of the line-item veto powers. Both the Senate and House passed the line-item veto overwhelmingly. This week the Senate will pass the conference report. A historic moment.

Mr. President, the time has come to put an end to out of control Federal spending that has taken money from the private sector—the very sector that creates jobs and economic opportunity for all Americans.

The American people are crying out for a smaller, more efficient Government. They are concerned about the trend that for too long has put the interests of big government before the interests of our job-creating private sector. They are irritated by the double-standard that exists between how our families are required to balance their checkbooks and how Government is allowed to continue spending despite its deficit accounts.

I believe that spending restraint for our nation is one of the most important steps we can take to ensure the economic opportunities for prosperity for our children and for our children's children.

As a nation—and as individuals—we are morally bound to pass on opportunity and security to the next generation.

The Federal behemoth must be reformed to meet the needs of all taxpayers for the 21st century. I am convinced that it is through a smaller, smarter government we will be able to serve Americans into the next century.

The President's recent budget proposals for next year offer clear evidence of the lack of political will to make the hard choices when it comes to cutting Government spending. His budget does not take seriously the need for spending restraint. In fact, Bill Clinton proposes spending over $1.5 trillion dollars this year and nearly $1.9 trillion dollars in 2002. In other

words, the only path that the President proposes is one that leads to higher Government spending, higher taxes, and ever-increasing burdens for our children.

Deficit spending cannot continue. We can no longer allow waste, inefficiency, and overbearing Government to consume the potential of America's future. I am committed to spending restraint as we move to balance the budget. As I said before, the line-item veto legislation will not solve our deficit problems, but it will be a helpful tool to cut spending.

While the authority conferred upon the President in this legislation is commonly referred to as a line-item veto, the authority is actually an authority to cancel—with specified limitations—appropriations, entitlements, and tax cuts. This cancellation authority bears closer resemblance to impoundment authority than to a traditional veto.

What this legislation before us does is to allow a President to sign an appropriation, entitlement, or tax bill and then exercise a separate authority to cancel an item in those laws, such cancellation to be effective unless Congress passes another law, presumably over the President's veto, to negate the President's exercise of his cancellation authority.

My concern with this legislation is that I have never heard of impounding a tax cut. I have heard of impounding spending, but not a tax cut. As you know, 43 State Governors have line-item veto authority, but not a single Governor has any authority to cancel a tax cut.

It is my studied judgment that the Federal Government spends too much and taxes too much. The well being of our people would be significantly improved if both spending and taxation were diminished. Consequently, I would like this legislation better if it allowed the President to cancel only spending items and not tax-cut items.

Fortunately, the President's authority in the tax area is narrow—evidence of the fact that the conferees understood the anomaly of impounding tax cuts. In contrast to the authority on the spending side whereby the President may cancel, first, ''any dollar amount of discretionary budget authority'' and (2), ''any item of new direct spending,'' the authority on the tax side is limited. The President has the authority to cancel only items which meet the definition of a ''limited tax benefit.''

A ''limited tax benefit'' is a defined term, which covers two specific categories:

First, a revenue losing provision which provides a Federal tax deduction, credit, exclusion, or preference to 100 or fewer beneficiaries under the Internal Revenue Code of 1986 in any fiscal year for which the provision is in effect; or

Second, any Federal tax provision which provides temporary or permanent transition relief for 10 or fewer beneficiaries in an fiscal year from a change to the Internal Revenue Code.

In further contrast to the President's authority to cancel on the spending side, the legislation before us provides an additional mechanism that applies only with respect to limited tax benefits, in order to further circumscribe the President's authority. This mechanism provides that in certain circumstances Congress may reserve unto itself the sole discretion to identify those items in a revenue or reconciliation bill or joint resolution that constitute a limited tax benefit. Such identification by Congress is controlling on the President, notwithstanding the definition of a ''limited tax benefit'' in the pending legislation, and is not subject to review by any court.

Historically, the Senate has enacted tax legislation either by unanimous consent, in the case of simple bills, or by agreeing to a conference report, in the case of more significant bills. As a practical matter, the bills adopted by unanimous consent generally deal with one subject and are not an important concern to advocates of a line-item veto authority in the tax area. Conference reports, in contrast, may contain a large number of tax items. It is in such context that a limited tax benefit might be found.

Consequently, whenever a revenue or reconciliation bill or joint resolution that amends the Internal Revenue Code of 1986 is in conference, the Joint Committee on Taxation is required to review the legislation and identify any provision that constitutes a limited tax benefit. If the conferees include this list of identified items in the conference report, the President can cancel a tax item only if it appears on the list. If the Joint Committee on Taxation finds that the bill contains no limited tax benefits and Congress includes a statement in the conference report that no such items exist, the President is thereby foreclosed from canceling any tax item. However, if Congress does not include a statement either identifying the specific limited tax benefits or declaring that none is contained in the bill, then the President may cancel a tax item if it falls within the definition of a limited tax benefit and the exercise of the President's authority meets the requirements of section 1021 of the Budget Act, as written by this pending legislation. Similarly, the President has such authority to cancel a limited tax benefit contained in legislation that is not adopted as a conference report. However, as I said, the occasion for an exercise of such authority would be rare, indeed.

The pending legislation authorizes conferees, in the above circumstances, to include a statement regarding the provision of limited tax benefits, notwithstanding any precedents or House or Senate rules—such as those rules relating to the proper scope of a conference—that might create a point of order against such inclusion. However, nothing in the pending legislation that authorizes the inclusion of such statements in a conference report limits either House from exercising its constitutional rulemaking authority by requiring, rather than authorizing, the inclusion of such statements.

Mr. President, I thank my colleagues for their attention, and I urge that they join me in supporting this needed legislation. I thank the Chair. I yield the floor.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas [Mr. BUMPERS], is recognized.

Mr. BUMPERS. Mr. President, the distinguished Senator from West Virginia yielded me 30 minutes, and I am quite sure I will not take that amount of time. I know there are many wishing to speak. It is one of those cases that Mo Udall described one time: ''Just about everything that needs to be said has been said but everybody has not said it.'' So I am going to add my two cents worth.

First of all, the constitutional problems with this bill are insurmountable.

The people listening or watching would be interested in knowing, nowhere in the Constitution is the word veto mentioned. Here is what the Framers said in article I of the Constitution:

> Every bill which shall have passed through the House of Representatives and the Senate shall before it become a law be presented to the President of the United States. If he approve he shall sign it but if not he shall return it with his Objections to the House in which it shall have originated.

I have been here 21 years. I am not a constitutional scholar but a country lawyer with a great reverence for the Constitution. I have voted against more constitutional tinkering, I will bet, than any Senator here in the past 21 years. Unhappily, we have Members of this body who think that what Madison and Adams and Franklin did 207 years ago was simply a rough draft for us to finish. This is a classic case of casual tinkering with our Constitution, that sacred document which was put together by the greatest assemblage of minds under one roof in the history of the world.

Do you know what else it is? It is a classic political response to an admitted problem. It is a diversion and a distraction of the American people. It tells them, ''Here is a simple answer to spending and deficits.''

Nothing could be further from the truth. But people busy trying to make a living and keeping food in the mouths of their children do not have time to examine the complicated details of this proposal.

How did it all start? Where did this idea of a line-item veto originate? I do not know. I had not been here very long when Ronald Reagan was elected President. He had promised to balance the budget, and the first thing you know the deficit was soaring. And 8

years later the national debt had gone from $1 trillion to $3 trillion—tripled in 8 years. I do not want to be hypercritical of President Reagan, but I heard him say time and time again, ''I can't spend a nickel that the Congress doesn't appropriate.''

What he should have been saying is ''The Government cannot spend a dime unless I sign off on it.'' Despite all of that rhetoric and talk about spending and deficits, from 1980 to 1992, the deficit went from $1 to $4 trillion. President Bush never vetoed an appropriations bill, and President Reagan vetoed one spending bill because it was not big enough—a Defense bill. He vetoed it because it did not have enough money in it.

President Clinton told my friends on the other side of the aisle, ''You pass that reconciliation bill, and I am going to veto it.'' And they passed it, and he vetoed it. He did not veto it because of the amount of money in it. He vetoed it because of its priorities. But at this very moment, conferees all over this Capitol building are meeting trying to craft a resolution about differences on spending and programs. Frankly, not making much headway.

The President wants another $3 billion in education, and that is the sticking point. Let me digress just for a moment on that point and say I saw the most interesting quote yesterday. I think it was the President of Peru who said everything should be subordinate to our children they are just forming their brain cells, their bones, their minds, and bodies, and they do that in a few short years. His point was that if you neglect your children, you have lost a generation of what would otherwise be healthy, productive citizens.

I thought that comment was beautiful, appropriate, and absolutely true.

So our President is simply saying that for everybody we allow to grow up in ignorance, we all pay a price for it. I do not know whether he is going to get the $3 billion or not. We may have another continuing resolution. I think we will. But my point is this. We are negotiating, and we are talking. If I were to say to my friends on the other side of the aisle, ''Let us just send this bill over to the President and let him pick and choose what he wants to kick out,'' I would start a riot right on the floor of the Senate. Nobody wants to do that.

I can remember when this line-item veto thing came up. I did not like it. People would say, ''Well, you were a Governor, weren't you?

''Yes, I was Governor.''

''Didn't you have a line-item veto?''

''Yes, I had a line-item veto.''

And I used it occasionally. Do you know what I used it for? To get legislators in line.

''Senator, you know that vo-tech school for your high school in this bill? That sucker is going to be gone unless you get back down there and change your vote.'' That is the way I used it. That is the way a President of the United States would use it. It is a lethal weapon in the hands of the executive branch.

Today, at this very moment, the deficit has fallen from a projected $390 billion—that is what it was projected to be. In 1992, we were looking at a 1995 deficit of $390 billion. It is half that amount, and it is already down close to $20 billion from that projection, during just the first 3½ months of this new fiscal year. And it was not done with a line-item veto. It was done by people who were determined to try to get the budget balanced.

Oh, this is a terrible, terrible, lousy idea. It started out as a political diversion for the benefit of a party, to say, ''Oh, wouldn't it be great if the President could just take all that pork out of there?'' I have seen figures to show if the President utilized the line-item veto to its maximum, it would have about a 1 to 2 percent effect on the total budget. It is unneeded, hopelessly unworkable, and an unprecedented grant of power to the President of the United States. And, yes, it is patently unconstitutional.

This morning we had a vote. Everybody here knows what it was about. It was about the Utah wilderness bill. Even the people of Utah, apparently, did not think much of that bill. It is very controversial. But the bill tracked almost exactly what President Bush recommended when he was President.

Now, if President Bush were sitting in the White House right now and we were voting on cloture, as we did this morning, and the advocates of the Utah wilderness bill needed the nine votes that they did not get this morning, they could go to the White House and the President could call three Republicans and maybe six Democrats and say, ''I have been looking at this bill over here. You know that little old research center you have down in your State? My people tell me they do not much like that. They do not think it is needed. They think it is a waste of money. I am inclined to disagree with my people. But, while I have you on the phone, I am a strong proponent of the Utah wilderness bill. Perhaps you and I could sit down. We could talk this over. Maybe you could see my way on the Utah wilderness bill and perhaps I could see your way on that little research center you have in your State.''

It is not unheard of. I just got through confessing to you that is what I did when I was Governor. I have fought against 12 aircraft carriers; I thought 10 was adequate. I fought against bringing those old moth-eaten battleships out of mothballs at a cost of about $2 billion. Now they are back in mothballs. I fought and have continued to fight against the space station, which will go down in history as the most outrageous waste of money in the history of the U.S. Government. We finally killed the super collider. On every one of those things, the President was on the other side. And we build a multiple launch rocket in Camden, AR. Are you beginning to get the picture? The President might say, ''Well, now, Senator, they tell me you are hot against the space station. I am hot for it. And the Defense Department told me they were thinking about moving the manufacturing of the multiple-launch rockets from Camden, AR, to someplace in Alabama.'' Do you think that does not get my attention, 750 jobs?

When James Madison and his colleagues in Philadelphia in 1787 were crafting that document that has given this country the oldest democracy in the history of the world, they said the power of the purse will be vested in Congress. They did not say ''unless the President decides to tinker with the figures.'' They said, ''The Congress shall pass appropriation measures.'' Do you know what they gave us in exchange for that? They said, ''You can spend the money, but you also have to raise it.'' That was supposed to be a nice balance. You have to tax the people. That is not popular. You have to raise the money with taxation before you can spend it, but we are going to give you the power of the purse.

What are we doing? We are saying, ''James Madison, you did not know what you were doing. You made a colossal mistake when you crafted our Constitution, so we are going to correct it. We are going to give the President all the powers you gave him in the Constitution, and we are going to take some away from Congress and say you not only have all the executive powers, being Commander in Chief and all those things, we are now going to give you the power of the purse.''

Colleagues, do not, 2 years from now, 3 years from now, come on this floor and start crying about this mistake we are about to make. Oh, I know it is popular. You walk in any diner in America and ask, ''Do you favor the line-item veto?'' You bet. ''Do you favor prayer in school?'' You bet. ''Do you favor a balanced budget amendment to the Constitution?'' You bet. Count me in. ''Are you against flag burning?'' You bet. All those things that have a great emotional impact on people, until they have heard, as Paul Harvey says, ''the rest of the story.''

We are saying, ''Mr. President, stop us before we spend again. We are out of control, and only you can bring us under control.''

This is not such a good idea for the President, either. Everybody knows President Clinton and I have served our beloved State of Arkansas together for many, many years. He is my friend. But he is for this. I am sick that I did not get a chance to dissuade him before he said that publicly. But he says he is for a line-item veto, and that is a mild disappointment to me.

But, you know, Mr. President, if he picks out some projects that are the wrong projects and decides to send them back over here and require us, ultimately, to have a two-thirds vote in both Houses in order to pass, he may

get in trouble in some State. So what do you think he is going to do? He did not just fall off a watermelon truck. He did not get elected President by being stupid. He is going to be very careful about what he excises out of the appropriations bills for fear he will lose that State.

Right now this Presidential race is heating up. Do you think a President is going to take anything big out of a bill in an election year? In an off year, when he is not running for President, he might pick out a couple of Senators he does not like, who have been particularly obstreperous and have fought against some of his programs, and in a year when he is not up for reelection, he may decide to take some of those projects out of the States of Senators of the other party.

Bear in mind, when we first started talking about term limits, it swept this country like a prairie fire. It is a terrible idea, a lousy idea. I have never been for it and will never be for it. Virtually every Member of this body on the other side of the aisle thought it was wonderful until they got control of Congress, and now you cannot even get it up for a vote.

We kept people's attention diverted just long enough, and the Republicans took control of Congress, and now it is not worth the cost of electricity to have a roll call on term limits. It would be defeated soundly. And when it comes to the line-item veto, they wanted a line-item veto so desperately—in all fairness 19 Democrats voted for this thing, too. What was it about? Take the heat off Ronald Reagan. That is really where it all started.

Then, suddenly, the contract, the famous Contract With America, over in the House of Representatives, it was put in the contract: line-item veto. Not many people in America knew it. Not many people in America cared. So we passed it. How long did it take after Bill Clinton got elected President—something nobody anticipated—we could not even get conferees appointed. Do you know what the bill now says? It will not go into effect until January 1997, with the ardent, divine hope that BOB DOLE will be President January 1, 1997.

Those are the shenanigans that are going on with our sacred Constitution.

Mr. President, another thing that those great minds in Philadelphia did almost 209 years ago is they provided a third branch of Government called the judicial branch. They set up a Supreme Court and such lower courts as Congress may establish. They are independent, and they are named for life. You cannot threaten them. An article in New York Times this morning describes a letter from the Federal judges vigorously opposing this, because if a Federal court renders a decision the President does not like, the next time around, he can just take their money away from them. He cannot take their salaries because you cannot reduce their compensation as long as they are sitting on the Court. You can take their clerks and secretaries away from them; you can cut the air-conditioning off. To give the President that kind of authority over the independent judiciary is the height of irresponsibility.

We not only have an independent judiciary, we just, fortunately, had a very wise man named John Marshall who was Chief Justice of the Supreme Court when the Marbury versus Madison case was argued. John Marshall said: ''Somebody has to decide: Are those laws they're passing over there in conformance with this Constitution or not?''

So was born the doctrine of judicial review. Thank God for John Marshall and judicial review and a truly independent judiciary.

So, Mr. President, this bill gives the President a legislative authority to amend bills. He can literally amend our bills. I am terribly uncomfortable knowing this bill is going to sail through here with a big majority, but I am comforted in the fact that I believe the independent judiciary that was set up to stop such foolishness as this will, indeed, do so. So I repose my trust in the Supreme Court of the United States on this issue.

I yield the floor.

Mr. HOLLINGS. Mr. President, when the Senate passed the line-item veto back in March of 1995, taxpayers across the Nation applauded the bipartisan efforts of the 69 Democrats and Republicans that worked shoulder to shoulder for the common good. What a difference a year makes. A year later with Presidential politics well underway, Republican conferees have engaged in an outrageous bait-and-switch operation designed to win political points and push meaningful reforms onto the back burner. Gone is the carefully crafted compromise bill offered on the floor by the distinguished majority leader that Republicans embraced after deep divisions arose in their own ranks regarding the appropriateness of expanding Presidential rescission powers. Instead, conferees have substituted legislation based on the McCain-Coats enhanced rescission proposal—a measure that in 1993 received only 45 votes. In abandoning the Senate approach, the Republican majority has dangerously eroded bipartisan support for the Senate line-item veto and now threatens to snatch defeat from the jaws of victory.

Mr. President, I have been in this fight for too long to accept such circus tricks. For well over the last decade, I have touted the line-item veto as a meaningful way to restore responsibility and accountability to the budget process. Specifically, I have supported the separate enrollment legislative line-item veto which avoids the constitutional objections that are evident in proposals that seek to change the President's constitutionally prescribed veto powers. Under the separate enrollment mechanism, after legislation had passed both Houses of Congress in the same form, the enrolling clerk would enroll each appropriations item, targeted tax benefit, or new entitlement spending provision as a separate bill. In allowing these items to be considered as separate bills, the President would be able to use his existing veto power as defined in the Constitution to reject legislation.

Currently, some 43 States provide their chief executive with some version of the veto pen. As a Governor of South Carolina, I used the line-item veto to balance four State budgets and win the first AAA credit rating of any Southern State. As a United States Senator, I have worked tirelessly to pass the line-item veto. In 1985, working with former Republican Mack Mattingly of Georgia, we rounded up 58 votes in the Senate for a line-item veto that was the prototype for the Senate passed version. In 1990, I offered similar legislation before the Senate Budget Committee and we adopted my bill by a vote of 13 to 6—the first time ever that the line-item veto had ever been favorably reported out of the Budget Committee. In 1993, Senator BILL BRADLEY and I offered an amendment to the budget reconciliation bill that would have applied the line-item veto to wasteful tax breaks as well as unnecessary spending and garnered 53 votes.

But instead of fighting for the proposal that has been gaining ground, the Republican majority, in resurrecting the enhanced rescission proposal, has backed the wrong horse. First, the conference report's enhanced rescission approach damages the fundamental balance of power between the coordinate branches of Government that is the cornerstone of our constitutional system of Government. Under current law, Presidential rescissions are suggestions. They have no force of law until Congress, as the legislative branch, enacts those changes. However, under new enhanced rescission powers, Presidential spending cuts and loophole closings would have immediate force and thus, affirmatively change the existing law just passed by Congress. To reinstate those provisions, Congress would have to reenact the specific proposals in a rescission disapproval bill, itself subject to a Presidential veto requiring two-thirds of both Houses to override. In my view, giving the President such legislative power amounts to an unconstitutional transfer of legislative power.

Second, the conference report's definition of a limited tax benefit would do little to focus scrutiny on special interest tax breaks. The original Senate bill, like the legislative language in the Republican Contract With America, appropriately recognized that pork is pork, be it of the tax or spending variety. But under the conference report, the definition becomes a tax lawyer's dream. It States that an item will be considered to be a limited tax benefit only if it is a tax benefit that goes to 100 or fewer beneficiaries or a transitional relief provision that accrues to

10 or fewer beneficiaries. This numerical distinction bears little relation to the relative wastefulness of a tax break and, if valid, might just as well apply to appropriations or new entitlement spending. By setting numerical thresholds, Congress does little to close outdated tax loopholes and a lot to encourage the Gucci gulch crowd to abuse the system and make sure that any newly proposed tax break has at least 101 beneficiaries. Moreover, additional restrictions further reduce the scope of qualifying tax benefits and erode the effectiveness of the line-item veto far beyond earlier versions.

Third, the conference report promises to give the President the veto pen, but withholds the ink. If conferees were really concerned about deficit reduction and not politics, why not make the act effective immediately rather that wait until either 1997 or the enactment of a balanced budget plan?

It is a sad truth, that politics are now more important than policy to this crowd. Having brought the line-item veto through the Senate on a bipartisan basis, the Republican majority has now retreated, fearing that a bipartisan line-item veto would leave no one over whom to claim victory. I do not know whether the Republican majority has the votes to prevail today, but ultimately this enhanced rescission approach will be found to be unconstitutional, which will bring us right back to where we started.

As I have stated earlier, it does not have to be that way. The bipartisan proposal that I and others have advocated, and that the Senate adopted last year, allows Congress to consider individual items in enacted legislation as separate bills. The Founding Fathers entrusted our Nation's chief executive with the power of the veto to provide our Government with the benefits of reconsideration and to promote legislative self-control. Unfortunately, over time, congressional construction of legislation has eroded that veto power where disparate spending and tax provisions are bundled in large omnibus bills. As a result, the President is forced to take it or leave it. Thus, the separate enrollment item veto eliminates this all or nothing choice and allows the President to apply his veto power in considering each item on its own merits.

More importantly, by maintaining congressional control over the process, the separate enrollment approach avoids the constitutional infirmities of enhanced rescission bills. As Lawrence Tribe, Constitutional Law Scholar at Harvard University, wrote in a letter to Senator BRADLEY,

> The most promising line-item veto by far is the suggestion . . . that Congress itself begin to treat each appropriation, and each tax measure, as an individual 'bill' to be presented separately to the President for his signature or veto. Such a change could be affected simply, and with no constitutional difficulty, by a temporary alteration in Congressional rules regarding the enrolling and presentment of bills.

Mr. President, this struggle will continue. And I will be willing in the future to work with colleagues on both sides of the aisle, as I have in the past, to develop a responsible, workable, constitutional, and bipartisan legislative line-item veto. I wish that day were today, but with the Presidential races in full swing, I fear once again that politics, not policy, is the driving force behind today's controversy.

Mr. BIDEN. Mr. President, I have for many years now supported a line-item veto that can help to wipe out wasteful special-interest spending items that are added to our appropriations bills.

But I have also cosponsored and supported line-item veto authority for the President that includes the authority to cut special-interest tax breaks, that lose money from the Treasury as surely as any spending program. In many ways they weaken our control over the deficit more than annual spending bills.

Because tax breaks characteristically last for years with little or no review, they can cause more damage than any single item in 1 year's appropriations bill.

The line-item veto we passed out of the Senate last year, the separate enrollment version that I have consistently supported for over a decade, included clear and strong language that put special-interest tax breaks under the same veto power as any pork-barrel spending project.

Unfortunately, the version that came out of conference with the House has so diluted that provision that it may well apply to virally no tax breaks.

That is why I will vote for Senator BYRD's proposal, that restores the clear authority to cut tax breaks as well as special-interest spending.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. What is the time situation, Mr. President?

The PRESIDING OFFICER. The Senator from New Mexico has 86 minutes. The Senator from West Virginia has 4 hours 9 minutes.

Mr. DOMENICI. At this moment, do I understand there is 5 minutes before Senator MOYNIHAN's time?

The PRESIDING OFFICER. That is correct.

Mr. DOMENICI. I yield myself 5 minutes.

Mr. President, before we finally vote to table Senator BYRD's motion, there will be another 15 minutes on our side for discussion and some kind of rejoinder. But I just want to have a 5-minute discussion with the Senators about this issue of the shift in power.

I say to all of them, I have been concerned about that for a long time. I was concerned about it as this line-item veto concept, over the last decade, worked its way through here. But I do not think we ought to leave the record with any inference that Congress is left with no power to respond to a President's use of this item veto authority.

So if, indeed, Mr. President, any President of the United States chooses to make a mockery of the Senate or the House by arbitrarily exercising this veto, let me suggest the Senate has to confirm his Cabinet. The Senate has to confirm his appointees, and there are hundreds of them. Presidents of the United States need legislation. They work to get elected, and they send us their proposals. Their proposals are their policies and they need to pass Congress to become law.

Let me suggest that any President who would choose to act capriciously and arbitrarily in this line-item veto exercise will do so at his own risk. We are really trying out this item veto—it is an experiment in seeing if we can do a better job of spending the taxpayers' money. I believe Presidents who will arbitrarily and capriciously use that tool take unto themselves the opportunity that will certainly find that Congress will have a chance to a respond arbitrarily toward Presidents.

I am not threatening this, and I am not suggesting a tit-for-tat sort of situation. But the truth of the matter is, there is some serious balance of this power that remains vested in the Congress of the United States, and, indeed, speaking for our institution, the U.S. Senate, this institution, there are plenty of things Presidents need the U.S. Senate to do so they can do their executive work well.

After all, the President is the Executive. He needs Congress to help him so he can use his Executive powers. If he chooses to use them arbitrarily with reference to the line-item veto, then, obviously, he might find an uncooperative Senate, he might find an uncooperative Congress. I do not think that is ever going to occur, but I thought it might be good for the record just to explore that we have not given away all our power, we have not given away all our ability to say ''yes'' and ''no'' to Presidents of the United States on a myriad of things that the President needs for his Executive power.

Now, why do I say it that way? Because the contention is that he is taking away some of our prerogatives as legislators in the appropriating process, and if he chooses to do that arbitrarily, then he is, obviously, weakening our power.

I am suggesting we are not without recourse. I think there is going to be a give and take for a few years, but we are not also accepting this concept in perpetuity. We are giving the Executive the line-item veto for 8 years, two full Presidential terms. Then we will have to pass it again or change it.

But, indeed, that event of taking another look to see if it is being used properly or if we should further define things is not left solely within the discretion of Presidents, because this line-item veto sunsets in 8 years and we will have something to say about the continuation of it.

The arguments about constitutionality, the arguments about balance of

power are serious. I commend the number of Senators for raising these serious issues in very delicate and sincere ways and I commend them for their concern. Most of all, I commend Senator BYRD for his dedicated explanations here and heretofore. He even wrote a whole book about the Roman senate versus losing its power and compared it in many ways to what he perceives might happen in this regard.

I was privileged to get one of those books. I do not always read books that are given to me, but I read that book. In fact, I told the Senator I had and I thought it was exciting.

He reminded me the successor to Rome was Italy. He reminded me I might even be a descendant of one of those people he wrote about.

Nonetheless, I thought that we ought to get this short 5-minute argument in response, just for our perspective in terms of why we are not fearful, why we do this with open eyes and open minds, hoping that it will help the American people get better Government at less cost. I yield the floor.

The PRESIDING OFFICER (Mr. ABRAHAM). The Senator from New York is recognized.

Mr. MOYNIHAN. Mr. President, I would like to begin by joining the chairman of the Budget Committee in expressing my profound gratitude and admiration to the revered, sometime President pro tempore of the Senate, ROBERT C. BYRD, who has set us a standard which if we fail to meet today, will remain to measure those who come after us.

Mr. BYRD. Mr. President, I thank the distinguished Senator from New York, whose obstinate veracity we all admire. I thank the Senator.

Mr. MOYNIHAN. Mr. President, I rise in the serene confidence that this measure is constitutionally doomed. That speaks to the stability of the American political system, a stability sustained in so many moments of peril by the American judiciary.

By contrast, I find myself once again agitated that a measure of such enormity—I use that word in both of its meanings—comes to us for so frivolous a reason. We are told by the committee of conference that the purpose of the conference report, which is to say the bill, is to promote savings. We are further informed that this is necessary because the American people consistently cite runaway Federal spending and a rising national debt as among the top issues of national concern over the past 15 years alone.

The national debt has quintupled from 1981 and 1996. Our total national debt amounted to just $1 trillion in 1981. Yet today, just 15 years later, that debt exceeds $5 trillion. Those numbers are not quite accurate, but they are approximate and will do.

I have stood on this floor for on to 15 years making the plain point that the increase in debt of the 1980's was an act of policy, designed to reduce the size of the Federal Government by reducing its fiscal resources. Fifteen days into his Presidency, February 5, 1981, President Reagan declared in a television address, ''There are always those who told us that taxes can't be cut until spending was reduced. Well, you know, we can lecture our children about extravagance until we run out of voice and breath or we can cut their extravagance by simply reducing their allowance.''

''Starve the beast'' was the phrase. A huge increase in debt was the result. But at least until now we have not set out to mangle the Constitution to make up for the honest mistakes of one administration.

The separate enrollment bill passed by the Senate last March would have required appropriations bills to be disassembled by the enrolling clerks after passage and presented to the President, one by one, for his signature. During that debate I spoke at some length about its constitutional and practical defects. The legislation before us is somewhat less convoluted. But its effect on the separation of powers between legislative and executive branches would be just as profoundly destabilizing.

I will describe at this point what has been described as the methods, the procedure for cancellation. Once such a cancellation is made, it would ultimately require a two-thirds vote of the Congress to override. The legislation would have us depart dramatically from the procedures set forth in the plain language of the presentment clause in article I, section 7.

> Every Bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it . . .

There is nothing ambiguous about this provision. The Supreme Court declared in INS versus Chadha in 1983 that—I quote the Court:

> It emerges clearly that the prescription for legislative action in Art. I, Section 7, represents the Framers' decision—[the framers' decision, Mr. President]—that the legislative power of the Federal Government be exercised in accord with a single, finely wrought and exhaustively considered procedure.

In Chadha the court held unconstitutional a statute that permitted either House of Congress by resolution to invalidate decisions of the executive branch as to whether certain aliens could be deported. This so-called legislative veto, according to the Court, impermissibly departed from the explicit procedures set forth in article I, which the court said were ''integral parts of the constitutional design for the separation of powers.''

And 3 years later, in Bowsher versus Synar, the Supreme Court was equally scrupulous in requiring strict adherence to the procedures set forth in article I. In Bowsher, the Court invalidated the provision of the Gramm-Rudman-Hollings Deficit Control Act, giving the Comptroller General of the United States authority to execute spending reductions under the act. The Court held that this violated the separation of powers because it vested an executive branch function in the Comptroller General, who is a legislative branch official. ''Underlying both decisions,'' the Congressional Research Service has written, ''was the premise . . . that the powers delegated to the three Branches are functionally identifiable, distinct, and definable.''

There is no ambiguity about the meaning of the requirements of article I, section 7, nor is there any uncertainty about why the framers vested the power of the purse in Congress. Madison in Federalist No. 58:

> This power over the purse may, in fact, be regarded as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure.

Until the Supreme Court considers this bill—and it surely will—we will not have a definitive constitutional determination. But some of the Nation's leading constitutional scholars have already concluded that this legislation will be struck down by the courts when it reaches them.

Michael J. Gerhardt, a sometime professor of law at Cornell University, and now professor of law at the College of William and Mary, has written me to say, that in his opinion—I quote—''its constitutionality is plainly doomed.''

He argues first that this legislation violates article I, section 7, in that it permits enactment of a bill that has never been voted on by Congress as such. That is, by exercising its power to cancel any part of the bill after signing it, the President would be creating a new law in a form never considered by Congress. That is plainly unconstitutional.

Professor Gerhardt argues that granting the President power to reconfigure bills passed by Congress is a legislative function which may not be delegated to the Executive. Finally, he notes that even if Congress could delegate the proposed veto power to the President, ''Congress lacks the authority to restrict Presidential authority by limiting the grounds a President may consider as appropriate for vetoing something.''

In his treatise, ''American Constitutional Law,'' Laurence H. Tribe of the Harvard Law School writes that—

> . . . empowering the President to veto appropriations bills line by line would profoundly alter the Constitution's balance of power. The President would be free not only to nullify new congressional spending initiatives and priorities, but to wipe out previously enacted programs that receive their funding through the annual appropriations process.

Professor Tribe goes on to say:

> Congress, which the Constitution makes the master of the public purse, would be demoted to the role of giving fiscal advice that the executive would be free to disregard. The Framers granted the President no such special veto over appropriations bills, despite

their awareness that the insistence of colonial assemblies that their spending bills could not be amended once they passed the lower house had greatly enhanced the growth of legislative power.

Yesterday, we asked Professor Tribe for his opinion on the legislation before the Senate today. He graciously telephoned our office this morning to say that after studying the conference report, he has concluded as follows. This is Laurence H. Tribe this morning:

This is a direct attempt to circumvent the constitutional prohibition against legislative vetoes, and its delegation of power to the President clearly fails to meet the requisites of article I, section 7. Furthermore, nothing in my letter of January 13, 1993 regarding ''separate enrollment'' has any bearing on the mechanism that would be enacted here.

Professor Tribe refers to a letter that was quoted several times in last year's debate in which he discussed the possibility that separate enrollment might be constitutional. He emphasizes now that his 1993 letter should not be interpreted to indicate any support for this legislation, which he concludes is certainly not constitutional. Those are the constitutional considerations briefly stated.

Now to an additional subject that is of particular interest to me as ranking member and sometime chairman of the Committee on Finance, I direct the attention of the Senate to the provision of section 1021(A)(3) of this legislation dealing with limited tax benefits. This new language appears to be a response to the argument, raised in the debate last year, that spending and tax benefits should be treated equally under a line-item veto.

The provision purports to subject tax benefits to the same treatment under the line-item veto as other spending, yet the bill's application to limited tax benefits would have very little real effect, save, as I believe, pernicious ones.

Under the proposal, ''limited tax benefit'' is defined as any tax provision identified by the Joint Committee on Taxation as, (first), a revenue-losing provision; (second), having 100 or fewer beneficiaries in any fiscal year; and (third), not within a number of very broad exceptions designed to exempt from the line-item veto any tax provision under which ''all similarly situated persons receive the same treatment.'' Any transition rule that the Joint Tax Committee estimates will benefit 10 or fewer taxpayers in any fiscal year would also be defined as a limited tax benefit.

This definition is so narrowly drawn that it will be almost effortlessly circumvented, for it is surely simple enough—and, Senators, as a member of the Finance Committee for 20 years, let me assure you, there is no problem expanding the number of beneficiaries from 10 to 100. It is very readily done and perhaps too often so.

To the extent the drafters are unwilling or unable to manipulate this numerical standard, one of the ''similarly situated'' exceptions often will be available to avoid the limited tax benefit designation. By way of an example, the conference report states that a provision that benefits only automobile manufacturers would not be treated as a limited tax benefit because ''the benefit is available to anyone who chooses to engage in the activity.'' Thus, a provision that benefits only Ford Motor Co. but is drafted in a manner potentially open to General Motors and Chrysler would apparently escape the line-item veto.

The tax-writing committees often and properly find that tax relief may be justified in narrow circumstances. Such narrow relief is and ought to be granted sparingly, yet these features of the bill create a perverse incentive to craft broader tax benefits than necessary in order to avoid application of the line-item veto. This is surely counterproductive.

Second, while seemingly objective on its face, the definition includes several elements that are seriously ambiguous, raising a number of questions. For example, what does it mean to be ''similarly situated?'' Can a provision be drafted to benefit all baseball team owners to the exclusion of other sport franchises? How does one determine who are the beneficiaries of a particular provision? Would the football coaches pension provision—and, yes, there was one, in the vetoed Balanced Budget Act of 1995—be deemed to benefit only the pension plan itself or the more than 100 coach participants? I could go on longer than the Senate would be interested or perhaps even edified to hear.

There is a final point, sir. By vesting in the Joint Committee on Taxation the exclusive authority—not subject to judicial review, not subject to debate on the Senate floor—the exclusive authority to make these determinations, this legislation would effectively grant great additional power in drafting tax legislation to the chairman of the Senate Committee on Finance and the chairman of the House Committee on Ways and Means—those two persons to the exclusion, I fear, of the rest of the Congress, the Members of either body.

While the Joint Tax Committee may indeed be the best institutional decisionmaker on technical tax issues, the decision of what constitutes a limited tax benefit can and no doubt would be quite political. The chairmen of the two tax-writing committees could exert pressure on the Joint Tax Committee to exclude favored items from application of the bill. Conversely, the chairmen would be granted potentially undue influence over other Members' legislative items with the implicit threat that such items would be deemed subject to the line-item veto. In his letter to which I referred earlier, Professor Gerhardt expresses similar concerns about this provision.

Now, I mentioned that the purpose of this legislation, according to the conference committee, is to limit runaway Federal spending and thereby reduce the debt. I am here to report—and I hope someone will hear—that, in point of fact, the era of runaway spending is behind us.

The Federal budget is in primary surplus for the first time since the 1960's—for the first time. This came about largely as a consequence of the Omnibus Budget Reconciliation Act of 1993, which provided for deficit reduction of some $500 billion—the largest deficit reduction measure in the half century since the wartime-incurred deficit was reduced following World War II. Such was the size of the reductions that interest rates fell sharply, and the deficit premium, as it had been called, in the markets dropped, and another $100 billion was saved. And we are, at long last, moving our deficits down—down to 2 percent of gross domestic product this year. The difference between the present deficit and a true surplus is merely the debt service on the debt accumulated in those previous 15 years. If we had the debt of the 1970's, we would be in surplus today.

The sequence whereby that happened was the surpluses of the Kennedy–Johnson era became neutral in the Nixon administration, and the recessions and inflation of the Ford and Carter administrations produced small primary deficits. Then came the 1980's.

Then came 1993 and, among other things, I stand here saying —happily, to an almost empty Chamber—we had the largest tax increase in history, and I was chairman of the Finance Committee. It was not forgotten entirely in New York when I came back from the election. How did we do this? Very simply, we did it by compromise. We did it by the kind of compromise the Framers anticipated. The Framers said they did not create a system of government which presumed virtue. They took interest as a given and virtue as something to be acquired. And the offsetting principles, as Madison put it, to make up for the defect of better motives. We made all manner of compromises in that legislation, and we would not have our deficit down to 2 percentof GDP today had we not.

For example, the business meal tax deduction was reduced from 80 to 50 percent. That was something a chairman from New York could offer and say, ''Here, I am willing to do this.'' The restaurant owners said, ''What about us?'' They were given a tax credit for the FICA tax they are required to pay on their employees' tips. Well, it was a compromise. I could go on and on about that. Gasoline and diesel fuels were raised 4.3 cents per gallon. Oh, Mr. President, do I remember that 0.3 cents—1 week in a room on the third floor without windows of this Capitol. But we got that. How? Airlines were given a 2-year exemption from the increased tax. We also took away tax benefits previously accorded exporters of raw timber.

Mr. President, these compromises make major legislation agreeable and effective. Supposing a member with

which a chairman worked were asked to make a concession in return for an accommodation; supposing that member had to think: The minute this bill becomes law, that chairman will go to that President and say, ''Take out that provision that was made for the Senator from Louisiana, because it was only done to get your bill by, Mr. President.'' You will not have that which makes legislation possible. You will not have that spirit of trust, which performance reinforces and creates the stability of our institutions. For if there is no trust, there will be no compromise, and if there is no compromise, there will be no Government—no stable Government.

I sometimes think of this simple fact. Mr. President, there are seven nations on Earth that both existed in 1914 and have not had their form of government changed by violence since 1914. There are two since 1800, and we are one of them. We are one of the seven and we are one of the two. That stability did not come easily, nor should it be assumed a given. That stability rests on the rock bed of the Constitution, and we do a very poor service to that stability when we begin to dynamite away parts of that rock bed.

I will close with simply one statement, which we are all required on our oaths to observe. The Judicial Conference of the United States has written to us to say: Do not do this. We are the least harmless branch—again, remember Madison—and we cannot make you do it. I will quote them:

> The line-item veto authority poses a threat to the independence of the judiciary because a President could put pressure on the courts or retaliate against the judges by vetoing items in judicial appropriation bills.

This is a profound responsibility which—in the end, we will turn to the courts to see sustained. I believe this is a serious concern. I hope that it will be attended to. Mr. President, I thank the Senate for its careful, courteous attention. I thank Senator DOMENICI. I thank, with special gratitude, Senator BYRD.

I will also, finally, ask unanimous consent that the letter from Prof. Michael Gerhardt, along with two letters from the Judicial Conference of the United States, be printed in the RECORD at this point.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

COLLEGE OF WILLIAM & MARY
SCHOOL OF LAW,
Williamsburg, VA, March 27, 1996.

Hon. DANIEL PATRICK MOYNIHAN,
U.S. Senate,
Washington, DC.

DEAR SENATOR MOYNIHAN: I appreciate the chance to share with you my opinion on the constitutionality of the Line Item Veto Act of 1996, as set forth in the Conference Report, dated March 4, 1996 (hereinafter ''the Republican draft'' or ''the Conference Report''). In this letter, I focus only on a few of the more serious problems with the Republican Draft and do not purport to analyze exhaustively its constitutionality. Even so, I am of the view that, given just the few significant flaws in the Conference Report that I identify and explain below, its constitutionality is plainly doomed.

Describing how the law works is crucial for identifying and understanding the constitutional and practical problems posed by some of its major provisions. As I read it, the critical delegation made by the Republican draft to the President is the authority to ''cancel'' all or any part of ''discretionary budget authority,'' ''and item of direct spending,'' or ''any targeted tax benefit.'' Presumably, a presidential cancellation pursuant to the act has the effect of nullifying a portion of a budgetary or appropriations bill unless a majority of each chamber of Congress agrees within a specified time period to pass a ''disapproval bill'' specifying its intention to reauthorize the particular item cancelled by the President. The President may veto the disapproval bill, which can then become law only if two-thirds of each chamber of Congress agree to override his veto.

In my opinion, there are three fatal constitutional problems with the procedures outlined above. First, the law effectively allows any portion of a bill enacted by Congress that the President signs into law but does not cancel to become law, in spite of the fact that Congress will have never voted on it as such. This kind of lawmaking by the President clearly violates Article I, section 1, which grants ''[a]ll legislative powers'' to Congress, and Article I, section 7, which grants to Congress alone the discretion to package bills as it sees fit.

Article I states further that the President's veto power applies to ''every Bill . . ., Every Order, Resolution or Vote to which the Concurrence of the Senate and House of Representatives may be necessary.''[1] This means that the President may wield his veto on the legislative product only, as Harvard Law Professor Laurence Tribe maintains in his treatise, ''in the form in which Congress has chosen to send it to the White House: be the bill small or large, its concerns focused or diffuse, its form particular or omnibus, the President must accept or reject the entire thing, swallowing the bitter with the sweet.''[2] Tribe's subsequent change of position is of no consequence, because he was right in his initial understanding of the constitutional dynamics of a statutorily created line-item veto mechanism. The fact that the President has signed the law as enacted is irrelevant, because a law is valid only if it takes effect in the precise configuration approved by the Congress. The President does not have the authority to put into effect as a law only part of what Congress has passed as such. The particular form a bill should have as a law is, as the Supreme Court has said, the ''kind of decision that can be implemented only in accordance with the procedures set out in Article I.''[3]

The Conference Report would enable the President to make affirmative budgetary choices that the framers definitely wanted to preclude him from making. The framers deliberately chose to place the power of the purse outside of the executive because they feared the consequences of centralizing the powers of the purse and the sword. As James Madison wrote in the Federalist No. 58, ''This power of the purse may, in fact, be regarded as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people.''[4] Every Congress (until perhaps this most recent one)—as well as all of the early presidents, for that matter—has shared the understandings that only the Congress has the authority to decide how to package legislation, that this authority is a crucial component of checks and balances, and that the President's veto authority is strictly a negative power that enables him to strike down but not to rewrite whatever a majority of Congress has sent to him as a bill.

The wisdom of leaving the power of the purse in Congress, as the framers desired as a means of checking the executive, is buttressed by the recognition that pork barrel appropriations—the evil sought to be eliminated by the Republican draft—are just unattractive examples of legislating for diverse interests, which is the very stuff of representative government. Apportioning the public fisc in a large and diverse nation requires degrees of coordination and compromise that the framers left to the initial discretion of Congress to be undone only as specified in Article I.

The second constitutional defect with the Conference Report's basic procedures involves the legitimacy of the cancelling authority given to the President. Proponents of this cancellation power defend it as a legitimate delegation of congressional authority to the President; however, this argument rests on a misunderstanding of the relevant constitutional doctrine. This misunderstanding is reflected in the CRS Report, which claims erroneously that ''while the [Supreme] Court has used a balancing test in some separation of powers cases, it has never chosen to do so in delegation cases.''[5] The latter assertion is simply wrong.

In fact, the Supreme Court has issued two lines of cases on congressional delegations. The first, which is not implicated by the Conference Report, involves delegations from Congress to administrative agencies or inferior bodies. The Court tens to evaluate such delegations under a ''functionalist'' approach to separation of powers under which the Court balances the competing concerns or interests at stake to ensure that the core function of a branch is not frustrated. For example, the Court used this approach in *Morrison* v. *Olson*[6] to uphold the Independent Counsel Act in which the Congress had delegated the executive function of criminal prosecution to an individual not formally associated with any of the three branches. Similarly in *Mistretta* v. *United States*,[7] the Court upheld the constitutionality of the composition and lawmaking function of the United States Sentencing Commission, at least three of whose members are required by statute to be lower court judges and to which the Congress delegated the authorities to promulgate, review, and revise sentence-determinative guidelines.

The Republican Draft clearly violates, however, the second line of Supreme Court decision on congressional delegations. These cases involve delegations from Congress to the titular head of a branch, such as one of its chambers or the President. In these cases, the Court has not used a balancing test; rather, the Court has used a ''formalist'' approach that treats the Constitution as granting to each branch distinct powers and setting forth the maximum degree to which the branches may share those powers. A formalist approach to separation of powers treats the test of the Constitution and the intent of it drafters as controlling and changed circumstances and broader policy outcomes as irrelevant to constitutional outcomes. In recent years, the Court has used this approach to strike down the legislative veto in Chadha because it would have allowed one House to take legislative action without complying with the procedures set forth in Article I; to hold in *Bowsher* v. *Synar*[8] that Congress may not delegate executive budgetary functions to an official over whom Congress has removal power; and to strike down in *Washington Airports Authority* v. *Citizens for the Abatement of Aircraft Noise*[9] the creation of a Board

[1] Footnotes at end of letter.

of Review partially composed of members of Congress with executive veto-like power over the decisions of the directors of the Metropolitan Washington Airports Authority.

Undoubtedly, the Court would follow a formalist approach in striking down the Republican draft. For one thing, the Court would not be able to escape applying the logic of *Bowsher* v. *Synar* to the proposed law. Whereas the crucial problem in Bowsher was Congress' attempt to authorize the exercise of certain executive authority by a legislative agent—the Comptroller General, here the problem is that the President would plainly be exercising what everyone agrees is legislative authority—the discretion to determine the particular configuration of a bill that will become law. Even the law's proponents admit it allows the President to exercise legislative authority, albeit in their view delegated to him by Congress.

Formalist analysis would be appropriate in evaluating such a delegation's constitutionality because it would be the kind about which the framers were most concerned; the checks and balances set forth in the Constitution deal directly with how the titular heads of each branch should interrelate. Hence, the Court has opted for a formalist approach to deal with delegations between the branches at their respective apexes to preclude one branch from aggrandizing itself at the expense of another. The Conference Report would clearly undermine the balance of power between the branches at the top, because it would eliminate the Congress's primacy in the budget area and would unravel the framers' judgment to restrict the President's role in the lawmaking process to a qualified negative rather than to have him exercise an affirmative power to redraft or reconfigure a bill.

Even if the Court used a functionalist approach to evaluate the constitutionality of the Republican draft, it would strike down the proposed law. The reason is that the law establishes an uneven playing field for the President and Congress on budgetary matters. In so doing, it profoundly alters the balance of power set forth in the Constitution. As Professor Tribe recognizes further in his treatise, such a scheme ''would enable the President to nullify new congressional spending initiatives and priorities as well as to wipe out previously enacted programs that receive their funding through the annual appropriations process. Congress, which the Constitution makes the master of the public purse, would be demoted to the role of giving fiscal advice that the President would be effectively free to disregard.[10] Once again Tribe's subsequent change of position does not undermine the soundness of his initial reasoning, for the historical record is clear that the framers, as Tribe had recognized himself, never intended nor tried to grant the President any ''special veto power over appropriation bills, despite their awareness that the insistence of colonial assemblies that their spending bills could not be amended once they had passed the lower house had greatly enhanced the growth of legislative power.''[11]

An example should illustrate the problematic features of the proposed cancellation mechanism. Suppose that 55% of Congress passes a law, including expenditures for a new Veterans Administration hospital in New York. The President decides he would prefer for Congress not to spend any federal money on this project, so after signing the bill into law, he exercises his authority to cancel the allocations made for the new facility. Again 55% of the Congress agrees to make this expenditure but this time through the passage of a disapproval bill. The President vetoes the latter, and Congress fails to override his veto, with only 55% of Congress (yet again) voting for the appropriation. The net effect is that the President would get to refuse to spend money 55% of the Congress will have thrice said it wanted to spend. Thus, the Conference Report would require Congress to vote as many as three separate times to fund something while assuming in the process an increasingly defensive posture vis-a-vis the President. In other words, the Republican draft allows the President to force Congress to go through two majority votes—the second of which is much more difficult to attain because it would have to be in favor of a specific expenditure that is now severed from the other items of the compromise giving rise to its inclusion in the first place—and one supermajority vote in order to put into law a particular expenditure.

A third constitutional problem with the Conference Report involves the constraints it tries to place on the President's cancellation authority. The latter is for all intents and purposes a veto. It has the effect of a veto because it forces Congress in the midst of the lawmaking process into repassing something as a bill that ultimately must carry a supermajority of each chamber in order to become law. Nevertheless, the Conference Report attempts to constrain the reasons the President may have for cancelling some part of a budget or appropriations bill. Just as Congress lacks the authority through legislation to enhance presidential authority in the lawmaking process by empowering him to reconfigure what Congress has passed as a bill into some other form prior to its becoming a law, Congress lacks the authority to restrict presidential authority by limiting the grounds a president may consider as appropriate for vetoing something.

Even apart from whatever constitutional problems the Conference Report may have, it poses two serious practical problems. First, the possibility for substantial judicial review of presidential or congressional compliance with the Republican draft is quite high. For example, it seems likely that lawsuits could be brought challenging whether the President has appropriately considered, as the act directs, such things as ''the legislative history'' or ''any specific sources of information referenced in such law or, in the absence of specific sources of information, the best available information'' or ''the specific definitions contained'' within it. At the very least, the bill requires that the President make some showing that he has done these things to the satisfaction of members of Congress (or at least those disposed to bring a lawsuit in the absence of such a showing.) There are also numerous procedures OMB and each house of Congress must follow that, presumably, could become the basis for judicial challenge if not done completely to the satisfaction of partisan foes in the other branch. In addition, there may be some questions as whether the President has in fact complied with Congress' or the Republican draft's understanding of the kinds of items he may cancel, such as a ''targeted tax benefit.''

The likely prospect of substantial judicial interference with the budgetary process is unsettling. The framers deliberately excluded the unselected federal judiciary from exercising any kind of decisive role in budgetary negotiations or deliberations. The Republican draft does not ensure that this exclusion will always be honored. The framers wanted all of the key decisionmakers within budget negotiations to be politically accountable; any budgetary impasse between the President and Congress that the federal courts help to resolve in favor of one or the other will simply diminish even further the public's confidence that the political process is the place to turn for answers to such deadlocks.

Another practical difficulty is with the authorization made by the Republican draft to the Joint Committee on Taxation to render an official opinion, which may become a part of a budgetary or appropriations measure, on whether it ''contains any targeted tax benefit.'' The bill precludes the House or the Senate from taking issue with the judgment of the Joint Committee's finding. As a practical matter, this empowers a small number of members of Congress to impose their will on the whole body. Although this might have the salutary effect of expediting the passage of the covered legislation, it forces those members of Congress who disagree with the Joint Committee to express their disagreement only by voting down rather than by trying to amend a bill that they otherwise would support.

In summary, I believe that the Republican draft conflicts with the plain language, structure, and traditional understanding of the lawmaking procedure set forth in Article I; relevant Supreme Court doctrine; and the delicate balance of power between Congress and the President on budget matters. I am confident that the Supreme Court ultimately would strike the bill down if it were passed by Congress and signed into law by the President.

It has been a privilege for me to share my opinions about the Conference Report with you. If you have any other questions or need any further analysis, please do not hesitate to let me know.

Very truly yours,

MICHAEL J. GERHARDT,
Professor of Law.

FOOTNOTES

[1] U.S. Const. art. I, section 7, cls. 2, 3.
[2] Laurence Tribe, American Constitutional Law 265 (2d ed. 1988).
[3] *I.N.S.* v. *Chada*, 462 U.S. 919, 954 (1982).
[4] The Federalist No. 58 at 300 (J. Madison) (M. Beloff ed. 1987).
[5] Congressional Research Service, Memorandum Regarding Constitutional Questions Respecting Bill to Grant President Enhanced Rescission Authority over Appropriations and Targeted Tax Benefits, at 16 (January 9, 1995).
[6] 487 U.S. 654, 693 (1988).
[7] 488 U.S. 361 (1989).
[8] 478 U.S. 714 (1986).
[9] 111 S. Ct. 2298 (1991).
[10] L. Tribe, supra note 2, at 267 (footnotes omitted).
[11] Id. at 267 (citing Note, Is a Presidential Item Veto Constitutional? 96 Yale L.J. 838, 841–44 (1987)).

JUDICIAL CONFERENCE OF THE,
UNITED STATES,
Washington, DC, March 15, 1996.

Hon. NEWT GINGRICH,
Speaker, U.S. House of Representatives, Capitol Building, Washington, DC.

Hon. ROBERT J. DOLE,
Majority Leader, U.S. Senate, Capitol Building, Washington, DC.

DEAR MR. SPEAKER AND MR. MAJORITY LEADER: I understand an agreement has been reached between Republican negoitators on ''line-item veto'' legislation. Although we have not seen a draft of the agreement to determine the extent to which the Judiciary might be affected, I did not want to delay communicating with you. The Judiciary had concerns over some previous versions of the legislation that were considered by the House and Senate. These concerns could also apply to the version on which agreement was just reached, depending on how it is drafted.

The Judiciary believes there may be constitutional implications if the President is given independent authority to make line-item vetoes of its appropriations acts. The doctrine of separation of powers recognizes the vital importance of protecting the Judiciary against interference from any President.

Protection of the Judiciary by Congress against Presidential power and potential intervention is also evident in the Budget and Accounting Act of 1921, which ensures that the financial affairs of the Judiciary be insulated from political influence by the President and his staff. Prior to this Act, the Judiciary's budget was controlled by the Executive Branch. Now, by law, requests for judicial branch appropriations must be submitted to the President by the Judiciary, but must be transmitted by him to Congress ''without change''.

This protection needs to endure. Control of the Judiciary's budget rightly belongs to the Congress and not the Executive Branch, particularly in light of the fact that the United States, almost always through the Executive Branch, has more lawsuits in the Federal courts than any other litigant. The integrity and fairness of our Federal Courts should not be endangered by the potential of Executive Branch political influence.

In whatever agreement is ultimately reached by the conference committee, on behalf of the Judicial Conference of the United States, I urge that the independence of the Third Branch of Government be preserved.

I appreciate your consideration and we stand ready to assist you in any way necessary.

Sincerely,

LEONIDAS RALPH MECHAM,
Secretary.

JUDICIAL CONFERENCE OF THE UNITED STATES,
Washington, DC, March 21, 1995.

HON. ORRIN G. HATCH,
Chairman, Committee on the Judiciary, U.S. Senate, Dirksen Office Building, Washington, DC.

DEAR SENATOR HATCH: On behalf of the Judicial Conference of the United States, I am pleased to respond to your request for the Judiciary's views on an amendment to the Dole substitute to S. 4. The amendment would require all appropriations of the Judiciary to be enrolled in one bill.

The Judiciary believes the amendment is critical to ensure the independence of the third branch. Without the amendment, each appropriated line item within the Judiciary would be a separate bill. The Executive Branch would then have the power to pick and choose which activities of the Judiciary it did and did not want funded. Such power over individual items raises the possibility that the Executive could seek to influence the outcome of litigation by selective vetoes or could try to retaliate for unwelcome decisions. The Executive is the major litigator in the federal courts.

The doctrine of separation of powers recognizes the extreme importance of protecting the Judiciary against inappropriate Executive Branch interference. This is reflected in the Constitution, which protects the tenure and salaries of Article III judges. It is also evident in the Budget and Accounting Act of 1921, which ensures that the financial affairs of the Judiciary be insulated from political influence by the President and his staff. Prior to this Act, the Judiciary's budget was controlled by the Executive Branch. Now, by law, requests for Judicial Branch appropriations must be submitted to the President and transmitted by him to Congress ''without change''. This protection needs to endure. Control of the Judiciary's budget rightly belongs to the Congress and not the Executive Branch. The Judicial Branch budget has never been the source of claims of ''pork barrel'' appropriations in Congress.

I appreciate having the opportunity to comment on this legislation and your amendment that will ensure that the integrity and fairness of our Federal Courts are not endangered by the potential of Executive Branch political influence.

We do not want our citizens to ever think that they are back in the position of the Colonists in 1776 who separated from England in part because of their perception, as Jefferson stated in the Declaration of Independence, that the Executive ''has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers. He has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries.''

Sincerely,

GILBERT S. MERRITT,
Chairman.

Mr. MOYNIHAN. Mr. President, I believe I have two moments. I yield them to whichever Senator wishes to use them. I thank the Chair.

Mr. DOMENICI. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. DOMENICI. Mr. President, I note that the minority leader is on the floor. I understand a vote is scheduled for 5:45, and we have 15 minutes. Is that the parliamentary situation?

The PRESIDING OFFICER. Yes.

Mr. DOMENICI. Does the Senator desire to use his leader time?

Mr. DASCHLE. That is fine.

Mr. DOMENICI. Can we do it even though time is set?

Mr. DASCHLE. We can do that.

Mr. DOMENICI. Mr. President, I ask unanimous consent that the distinguished minority leader be permitted to speak for 10 minutes, after which the 15 minutes that I have follow, and after that we proceed to a vote on or in relation to the Byrd amendment.

The PRESIDING OFFICER. Is there objection?

Mr. STEVENS. Reserving the right to object.

Mr. DASCHLE. Mr. President, I would be more than happy to keep my remarks to fewer than 5 minutes. So perhaps if it would work, we can still try to keep the time. I know a lot of people are scheduling their time for the vote. I will be happy to limit my remarks to no more than 5 minutes, and perhaps even less.

Mr. DOMENICI. Mr. President, I yield up to 5 minutes of my 15 minutes to the distinguished minority leader so we keep the time as agreed.

Mr. DASCHLE. Mr. President, I thank the manager of the bill. Mr. President, let me begin by acknowledging the masterful presentation made by the distinguished Senator from West Virginia. No one knows this issue better than he does. No one has studied constitutional balance of power more carefully than has he. He has raised issues today of constitutionality and the balance of power with a clarity of vision and a depth of knowledge that every Senator ought to carefully consider.

His motion certainly would lead to a more thoughtful approach, in my view. The Byrd motion is one that should be supported by all Members of the Senate. It instructs the conferees to report a bill similar to S. 14, a bipartisan bill that was debated very carefully on the Senate floor a little over one year ago. It was sponsored by Senators DOMENICI and EXON and cosponsored by the majority leader, and reported out of the Budget Committee and the Governmental Affairs Committee. It does what the distinguished ranking member of the Appropriations Committee has indicated it would do—maintain the proper relationship between the role of Congress as well as the responsibilities of the President.

I believe it has three major advantages, and I want to touch very briefly on each of these advantages.

First, this plan provides an equal opportunity for the President to examine tax expenditures as well as appropriations measures. The Republican plan, constituted in the conference report, does not allow the President to review all of the special-interest tax breaks that are all too often considered on the Senate floor. It applies only to those that benefit fewer than 100 taxpayers. Frankly, there are not many provisions that apply to 100 or fewer taxpayers. The Joint Tax Committee determines which breaks can be canceled, and I believe that in many cases that alone ought to give us pause. Under S. 14, the President has the opportunity to more broadly apply the powers to examine all expenditures in a more careful way, not only on appropriations bills but also with regard to tax expenditures.

Second, we protect majority rule, which is a central principle of democracy. S. 14 requires a congressional majority to approve the cuts proposed by the President. Under the conference report, the President can prevail with the support of only one-third of either House of Congress. So, clearly, we abrogate the concept of majority rule. We certainly would not permit a minority to hold a majority hostage in cases like this.

Clearly, S. 14 is constitutional, as the distinguished ranking member and former chairman of the Appropriations Committee has so eloquently described in many ways this afternoon. He has enlightened us as to the problems with the conference report. The alternative that he presents avoids these problems by requiring Congress to vote to approve Presidential rescissions. Congress should not approve a bill subject to court challenge, and, clearly, the conference report will be challenged in court.

So, I believe, Mr. President, the motion of the distinguished Senator from West Virginia offers the best of both worlds. It gives the opportunity for the President to apply additional scrutiny to items in legislation which may be called into question. It gives him the

opportunity to apply that scrutiny both to tax expenditures as well as appropriated spending. It allows us to retain majority rule and preserves the balance of power. It avoids constitutional questions that will certainly be raised as soon as this legislation would be enacted, and it is effective immediately.

We do not have to wait for the end of this year. We do not have to assume that we have to wait until the next term of the President to allow the power to be utilized. It allows him to do it now. We can look between now and the end of the year at the ways in which this might be utilized. This will allow us more opportunity to examine whether or not this approach is an appropriate way with which to assure additional scrutiny of spending and tax breaks in the future.

So I applaud the work of the Senator from West Virginia and others who have brought us this opportunity. I think it is important. It is critical that we carefully consider the constitutional questions that the distinguished Senator from West Virginia has raised.

I hope our colleagues will support this motion to recommit.

I yield the floor.

Mr. DOMENICI. Mr. President, with the minority leader on the floor, I wonder if it might be in order for me to ask unanimous consent that the yeas and nays be ordered on the Domenici motion to table the underlying amendment. I ask unanimous consent for that.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. DOMENICI. I yield 5 minutes of my time to Senator STEVENS.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

Mr. STEVENS. Mr. President, I call the attention of the Senate to the very basic provision in this bill. It says in section 1021(a), ''Notwithstanding the provisions of part A and B, and subject to this part, the President may, with respect to any bill or joint resolution that has been signed into law pursuant to article I, section 7, of the Constitution of the United States * * *'' take the action under this bill.

What we in fact under this bill are doing is giving the President the authority, in effect, to impound moneys that we have given him authority to spend. And we have the right to take that notification of any cancellation that he sends to us and send him, in effect, another bill saying we intend for you to spend those moneys. He may veto that second bill if he wants. But in the first instance, we are not giving the President any authority to change the law. We are telling him he can cancel funds provided only if the cancellation would reduce the Federal budget deficit, not impair essential Government functions, and not harm the national interest.

The issue here is whether the Congress has the right to delegate to the President the authority to not spend money. This is not a violation of separation of powers or a violation of the presentation clause of the Constitution. We have given the President, under this bill, limited authority to cancel—that is, to not spend—certain moneys Congress otherwise would have directed the President to spend.

I want to make sure people understand the way this works. A bill is sent to the President, which the President may sign, reject, or let it take effect without his signature under article I, section 7, of the Constitution. If, and only if, the President signs the bill into law, then under this bill the President is given the delegated authority from Congress not to spend certain portions of the money that he cancels according to the provisions of the bill.

I have heard the concept of many of the Senators, but I want to make sure that we all understand this is no different from giving the President the discretion not to enforce a particular law under certain circumstances or to decide, when based on specific criteria, to impose or to lift an import duty. We have done that. This conference report has no Chadha problems, based on the Supreme Court decision in the Chadha case. Congress is not going to be given the power to legislatively overturn a Presidential decision with regard to a veto or implementation of a law.

We have the power to take action for the second time after the President uses his authority under this bill to impound or cancel moneys and, in effect, put them into the track where they will reduce the deficit. We can pass a second bill. The President would veto that. He has no authority under this bill to deal with that second proposal. If we pass such a bill and direct the President to spend money he otherwise thought he should cancel, he has the authority to veto that bill, and we have the authority to override his veto; in effect, to mandate him to spend the money as we have said to do so on two occasions.

But I urge Senators not to refer to this as some action to give the President the authority to change a bill before it becomes law or to change in any way legislation that does not affect dollars. He only has the authority to, in effect, cancel the spending of dollars under specific circumstances that, while the circumstances are clearly limited, the scope of the authority is very broad.

Mr. DOMENICI. Mr. President, first, let me add to my brief comments a while ago about Presidents who might abuse this power because a lot has been said about how this might change the balance of power.

I remind every Senator that there is nothing in this bill that says we have to appropriate money that the President asks us for. Let me repeat; we do not have to appropriate money that the President asks us for. You see, if a President decides to be totally arbitrary about this, the Congress of the United States does not have to appropriate money for things the President wants. That is our balance. There can be no money spent unless we appropriate it.

So, in addition to all of the other things the President needs of a Congress and a Senate under the Constitution, those are all our powers that he needs to help him do his job.

In addition, he needs dollars to run the Government of which he is the Chief Executive, and we have to appropriate those dollars.

I am not worried about the balance of power because, obviously, Congress will withhold some of the President's power if this gets into an arbitrary match of power, and I believe it is going to be used to the betterment of our country, our people, and the taxpayers.

With reference to the motion we are going to vote on, let me be very brief and very forthright. The amendments Senator BYRD has offered and that I am going to move to table shortly will return the line-item veto to conference. It took us 6 months to reach a compromise on the line-item veto. To send it back with instructions is to kill it because what is purported to be instructed cannot pass the Senate and cannot pass the House.

This motion calls us to cast aside the compromise embodied in this conference report. It calls on the conferees to adopt an expedited rescissions approach instead. Both Houses rejected the expedited approach. Last year, during the Senate's consideration of the line-item veto, we voted 62 to 38 to table the expedited approach which the distinguished Senator from West Virginia, Mr. BYRD, is asking us to instruct the conference committee to do again—a nullity for sure, for nothing will happen, and I believe that is what is intended if these amendments were adopted.

I support the compromise, and it is now time to vote on the conference report on the line-item veto. A vote in favor of the motion will be a vote to defeat the line-item veto conference report before us. I urge Senators not to do that.

So we will all have a chance to make sure we do not send this to conference, I yield back the remaining time that I have, and I yield the floor.

I move to table the underlying amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the motion to recommit the conference report. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

The result was announced—yeas 58, nays 42, as follows:

[Rollcall Vote No. 55 Leg.]

YEAS—58

Abraham	Frist	McCain
Ashcroft	Gorton	McConnell
Baucus	Graham	Murkowski
Bennett	Gramm	Nickles
Bond	Grams	Pressler
Breaux	Grassley	Robb
Brown	Gregg	Roth
Burns	Hatch	Santorum
Campbell	Helms	Shelby
Chafee	Hutchison	Simpson
Coats	Inhofe	Smith
Cochran	Kassebaum	Snowe
Coverdell	Kempthorne	Specter
Craig	Kennedy	Stevens
D'Amato	Kerry	Thomas
DeWine	Kyl	Thompson
Dole	Lieberman	Thurmond
Domenici	Lott	Warner
Faircloth	Lugar	
Feinstein	Mack	

NAYS—42

Akaka	Feingold	Levin
Biden	Ford	Mikulski
Bingaman	Glenn	Moseley-Braun
Boxer	Harkin	Moynihan
Bradley	Hatfield	Murray
Bryan	Heflin	Nunn
Bumpers	Hollings	Pell
Byrd	Inouye	Pryor
Cohen	Jeffords	Reid
Conrad	Johnston	Rockefeller
Daschle	Kerrey	Sarbanes
Dodd	Kohl	Simon
Dorgan	Lautenberg	Wellstone
Exon	Leahy	Wyden

The motion to table the motion to recommit was agreed to.

Mr. CHAFEE. Mr. President, I thank the managers for the opportunity to speak in favor of the conference report to accompany the Line-Item Veto Act, S. 4.

I would challenge those who argue that the President already has sufficient authority to rescind unwanted spending items. The opposite is true. The rescission authority vested in the President today barely works at all. In the overwhelming number of cases, Presidential rescission orders are ignored by Congress, and the subject funds are ultimately obligated.

In fact, since the rescission authority was established in 1974, Congress has only given approval to $23.7 billion of the $74 billion Presidential rescission requests. In other words two-thirds of the rescission requests died a quiet death.

By requiring Congress to affirmatively disapprove rescissions, this legislation would transform the present ''paper tiger'' into a functional tool for reducing and eliminating: Special interest spending items in appropriations bills; expansions of existing, or establishing of new, entitlements; and tax expenditures which benefit narrow groups of taxpayers.

Mr. President, the debate over this issue has been a long and tortured one. In looking back, I found an interesting item which illustrates just how long and tortured it has been. I want to direct the Senate's attention to a speech given on the floor of the House by Congressman R.P. Flowers from New York in support of the line-item veto. The date was December, 1882.

In addition to a belief that it would foster economy in Government, Representative Flowers had another motivation—that of supporting the wishes of a constituent who just happened to be President of the United States. That President was Chester A. Arthur, who advanced from Vice President to President when James A. Garfield was tragically struck down by an assassin's bullet in 1881.

In his annual message to the Congress, President Arthur stated:

> I commend to your careful consideration the question whether an amendment of the Federal Constitution . . . would not afford the best remedy for what is often a grave embarrassment both to Members of Congress and to the Executive, and is sometimes a serious public mischief.

The ''embarrassment'' and ''public mischief'' to which the 21st President was referring was the same problem then that it is today: The tactic we in Congress employ of burying narrow spending provisions—which cannot on their own merits survive the legislative process—in massive must-pass appropriation bills.

Congressman Flowers delivered his speech 114 years ago. While the proposal before us today is far less ambitious than the constitutional amendment requested by President Arthur, the arguments have been thoroughly vetted.

Representative Flowers summarized the arguments against the line-item veto as: First ''. . . an indignant howl about our rights an interests'' [in the Legislative Branch]; and second, ''. . . those who feign mistrust of the Executive, who fear too much 'one-man power.'''

Wisely, the bill before the Senate today includes a sunset provision. If it turns out that this authority is abused by the Chief Executive—which I do not fear—then Congress can let the authority die.

The point is, we have been debating this issue for at least 114 years, and the arguments pro and con have been debated ad nauseam. Passage of this legislation will not solve our deficit problems. However, it will give the American people one more tool—one more check against unnecessary spending. Frankly, in my view, we need all the help we can get in that regard. So, I say: Let us pass this conference report and get on to other business.

Mr. KYL. Mr. President, the Line-Item Veto Act is a good bill, but one that should not be necessary. Congress should always have the good sense to spend taxpayers' hard-earned money wisely, for the benefit of all citizens.

Mr. President, British historian Alexander Tytler once said:

> A democracy cannot exist as a permanent form of government. It can only exist until the voters discover that they can vote themselves largesse from the public treasury. From that moment on, the majority always votes for the candidates promising the most benefits from the public treasury with the result that a democracy always collapses over loose fiscal policy, always followed by a dictatorship. The average age of the world's greatest civilization has been 200 years.

Alexander Tytler makes an excellent point, but perhaps the American people have wisdom and foresight that he could not understand. The American people recognize the burden that a spendthrift government can impose on them, their children, and their grandchildren. And that is why they have been so adamant about demanding change. Demanding less Government spending, lower taxes, and a leaner Government—before Tytler's prophecy comes to pass.

The American people began to change the face of Congress in the last election. And of course, electing fiscally responsible individuals to the Congress is probably the most powerful and effective weapon that the American people can wield in the fight against pork-barrel spending. It is more effective than a line-item veto can ever be.

The line-item veto itself is not a cure-all. It will not result in a balanced budget. There is not enough pork that can be deleted from the budget to accomplish that. But, if properly exercised by the President, it can make it easier to get to balance.

Make no mistake about it, this bill will shift a great deal of new power to the President. I do not relish that prospect because the potential for abuse by the President is great. He can use the veto power to reward or punish Members of Congress, depending upon whether they support or oppose other policies of his administration.

Most Presidents, however, will be responsible about how they use this awesome new power. That is because all eyes of the American people will be on the President if he abuses it, or if he fails to properly delete wasteful spending from appropriations bills. By signing this bill into law, President Clinton will be accepting significant new responsibilities from the American people to safeguard their hard-earned tax dollars. I have no doubt that they will hold him accountable if he fails to use the new power wisely.

Mr. President, just a few weeks ago, the nonpartisan taxpayers' organization, Citizens Against Government Waste, released the 1996 Congressional Pig Book Summary. The good news is that the organization certified that, in 1995, Congress produced the first pork-free appropriation bill ever—the legislative branch appropriations bill.

Unfortunately, however, not all of the news was good, and that is one reason why the line-item veto is still necessary. Citizens Against Government Waste found a total of $12.5 billion in pork-barrel spending in eight other fiscal year 1996 appropriations bills that have been signed into law. Among the projects that the group identified were rice modeling at the Universities of Arkansas and Missouri; shrimp aquaculture; brown tree snake research; the International Fund for Ireland; and the Iowa communications network, to name a few.

These are the kinds of projects that are likely to be the target of a line-item veto, projects that are typically

hidden away in annual spending bills. They're enough to demonstrate the ability of certain legislators to ''bring home the bacon'' and curry favor with special interest groups back home. But, they don't amount to enough to cause Congress to reject an entire bill or prompt the President to veto a bill and bring large parts of the Government to a standstill.

The line-item veto is designed to bring accountability to the budget process. Instead of forcing the President to accept wasteful and unnecessary spending in order to protect important programs, it puts the onus on special interests and their congressional patrons to prove their case in the public arena. It subjects projects with narrow special interests to a more stringent standard than programs of national interest. The special interests would have to win a two-thirds majority in each House. Programs of national interest would merely require a simple majority.

That is the shift in the balance of power which the line-item veto represents. It is a shift in favor of the taxpayers, and that is why I intend to support it. If the Government were running a surplus, the taxpayers might be willing to tolerate some extra projects. But the Government is running annual deficits that are far too high, and there is no extra money to go around. There is not even enough to fund more basic needs.

Mr. President, when you find yourself in a hole, the first rule of thumb is to stop digging. Let us begin climbing out of the hole we have dug for ourselves and future generations. Let us pass the line-item veto.

EMERGENCY SPENDING PROVISIONS

Mr. FEINGOLD. Mr. President, will the Senator from Arizona yield for a question?

Mr. President, the Senator from Arizona noted in his opening statement on this measure that the emergency spending reforms he and I were able to include in the Senate-passed version were dropped in the conference committee version of this line-item veto measure.

Our provision limited emergency spending bills solely to emergencies by establishing a new point of order against nonemergency matters, other than rescissions of budget authority or reductions in direct spending, in any bill that contains an emergency measure, or an amendment to an emergency measure, or a conference report that contains an emergency measure.

The provision also featured an additional enforcement mechanism to add further protection by prohibiting the Office of Management and Budget from adjusting the caps on discretionary spending, or from adjusting the sequester process for direct spending and receipts measures, for any emergency appropriations bill if the bill includes extraneous items other than rescissions of budget authority or reductions in direct spending.

I know he shares my disappointment that those provisions were dropped.

Is it his understanding that though the emergency spending provisions were dropped from the final conference version of the line-item veto measure, we have been given assurances that the Budget Committee staff will work with our own staffs to bring this matter back on an appropriate legislative vehicle?

Mr. MCCAIN. Mr. President, that is my understanding, and I look forward to working with the Senator from Wisconsin and the Budget Committee staff to address any technical concerns there might be with the emergency spending provisions.

Mr. FEINGOLD. I thank my friend from Arizona.

As we consider ways to empower the President to veto unjustified spending through this new authority, it only makes sense to enact reforms that prevent those abuses from passing in the first place.

The emergency spending reforms that Senator MCCAIN and I introduced as legislation, and included in S. 4 as it passed the Senate, did just that.

Our emergency spending legislation previously passed the House by an overwhelming vote and I am hopeful that we will soon be able to overcome the resistance to this provision and have it enacted into law as well.

And though I regret our reforms were not included in this proposal, I look forward to working with the Budget Committee and my good friend from Arizona to iron out any drafting problems, and find an appropriate vehicle for this needed reform.

Mr. FRIST. Mr. President, I rise today in strong support of the line-item veto. No single legislative procedure will do more to curb wasteful Government spending than this powerful legislative tool. For years, Washington has talked about this idea without acting. I am proud to be a Member of the Congress that will make the line-item veto a reality.

For years, the Federal Government has demonstrated an appalling lack of fiscal responsibility. Today, our national debt is over $5 trillion—more than $19,000 for every man, woman, and child in America—and is growing at a rate of $600 million a day. Entitlement spending—the two-thirds of the Federal budget on automatic pilot—is growing so fast that it will consume all of our tax dollars in just over a decade. Meanwhile, the other third of our budget, discretionary spending, is riddled with unnecessary pork-barrel projects. Basically, it is too easy to spend and too hard to save here in Washington. We owe it to the American taxpayer to impose fiscal discipline on Federal spending habits.

The line-item veto reforms our institutional and procedural tendency to overspend. Here's how it works. The President already can veto spending bills passed by Congress. S. 4 gives the President the authority to veto specific spending items—including appropriations, new entitlements, and limited tax benefits. The President's cancellations will stand unless Congress passes a bill restoring the spending and providing the two-thirds support necessary to override any additional vetoes.

Some people argue that S. 4 shifts too much power from Congress to the President. However, I believe the President needs a tool to help control Congress' insatiable appetite for spending the taxpayers' money. We must give our Chief Executive the power to strike discreet budget items which do not serve the national interest. In fact, I am so convinced that the line-item veto is the right thing to do that I am willing to give this power to a President of another political party.

While the line-item veto alone cannot balance our budget or pay off our national debt this one legislative tool could perform radical surgery on wasteful federal spending In 1992, the General Accounting Office [GAO] estimated that a line-item veto could have saved $70 billion in wasteful spending during the last half of the 1980's. That $70 billion could provide a $250 tax credit for families with children for 7 years. Taxpayer watchdog group Citizens Against Government Waste identified an additional $43 billion in procedural pork spending in the last 5 years, spending which circumvented normal budget procedures. Imagine how a line-item veto could have saved a significant portion of that money.

But we don't need the GAO or a taxpayer watchdog to tell us that the line-item veto works. We only need to ask the 43 of our Nation's Governors who use this tool on a regular basis. In fact, when President Clinton was Governor or Arkansas, he used the line-item veto 11 times. If the States can control spending and balance their budgets, the Federal Government should follow their example.

Mr. President, I look forward to the day when I can tell my three sons, my fellow Tennesseans, and every American that they have inherited a country free of debt. I look forward to the better job opportunities and higher the standards of living they they will enjoy. And at that moment, I hope I can look back at the day we passed the line-item veto as the day a bipartisan group of legislators took a significant step down the road to fiscal accountability. I strongly urge my colleagues to support this bill.

THE LINE-ITEM VETO: STILL AN ILL-CONSIDERED PROPOSITION

Mr. PELL. Mr. President, when the line-item veto was last before us, I said that I found myself in opposition both on philosophical as well as practical grounds.

I must be quick to acknowledge that my reservations on practical grounds have been met. The conferees deserve credit for replacing the cumbersome and unworkable scheme of separate enrollment in the Senate version of the

legislation, with at least a workable plan for enhanced rescission authority.

But my underlying philosophical reservation remains. As I said when the bill was last before us, I simply believe that Congress should be extremely chary in yielding its power of the purse to the executive branch. I hold this view on the basis of my Senate service under eight Presidents of both parties during my 35 years in the Senate, and notwithstanding the cordial relationships I have had with all of them.

I continue to believe that the executive branch, which under our Constitution, quite properly is a separate power center with its own agenda and its own priorities, inevitably will seek and use any additional power to achieve its objectives. And the pending grant of veto power over specific items, I fear, will surely give even the most benign and well-motivated Chief Executive a new means for exercising undue influence and coercion over individual members of the legislative branch.

I hold this view, notwithstanding my loyalty and respect for President Clinton, who I know would use such a grant of authority wisely. But it is the balance of institutional forces that must be considered, and it is in this connection that we have been well served by the erudition of the senior Senator from West Virginia [Mr. BYRD], who has reminded us so eloquently of the need to protect the legislative prerogatives. I agree with him and I commend him for his great service to the cause of constitutional government.

Mr. LEAHY. Mr. President, I have a number of serious concerns and questions about the conference report on the line-item veto, S. 4.

First, the line-item veto encourages minority rule by allowing a Presidential-item veto to stand with the support of only 34 Senators or 146 Representatives. This is not majority rule. We are back to anti-democratic supermajority requirements, which I thought were dismissed during the balanced budget amendment debate.

By imposing a two-thirds supermajority vote to override a Presidential-item veto, the line-item veto undermines the fundamental principle of majority rule. Our Founders rejected such supermajority voting requirements on matters within Congress' purview.

Alexander Hamilton described supermajority requirements as a poison that serves to destroy the energy of the government, and to substitute the pleasure, caprice, or artifices of an insignificant, turbulent, or corrupt junto to the regular deliberations and decisions of a respectable majority.

Such supermajority requirements reflect a basic distrust not just of Congress, but of the electorate itself. I reject that notion.

Moreover, supermajority requirements in any line-item veto bill is overkill. I am afraid that this bill will sacrifice many worthy projects on the altar of supermajority votes.

But supermajority power is not needed to strike wasteful line items.

The purpose of any line-item veto bill is to give the President the power to expose wasteful line items to the sunlight of a congressional vote.

A majority vote is enough to kill any wasteful line item while still allowing Members to convince their colleagues to vote for a worthy line item.

In addition, these supermajority requirements hurt small States, like my home State of Vermont, by upping the ante to take on the President.

Under the line-item veto, Members from small States would have to convince two-thirds of Members in each House to override the President's veto for the sake of a project in another Member's district.

With Vermont having only one representative in the House, why would other members risk the President's wrath to help us with a project vetoed by the President?

Another question mark under this conference report is tax breaks.

Under the bill, the President has authority to veto only limited tax benefits, which are defined as providing a Federal tax deduction, credit or concession to 100 or fewer beneficiaries.

Any accountant or lawyer worth his or her high-priced fee will be able to find more than 100 clients who can benefit from a tax loophole. If more than 100 taxpayers can figure out a way to shelter their income in a tax loophole, the President would not be able to touch it. The bigger the loophole in terms of the number of people who can take advantage of it, the safer it is.

The definition of limited tax benefit sounds like a tax loophole in itself.

Would the President have line-item veto authority over the capital gains tax cut described in the House Republican Contract With America?

It certainly is estimated to lose revenue—the bipartisan Joint Committee on Taxation has estimated that the contract's capital gains tax cut would lose almost $32 billion from 1995 to 2000.

Yet somehow I think a capital gains tax cut would fall beyond the scope of being a limited tax benefit under this legislation.

Why do we not quit this shell game. Just state in plain language that the President has line-item authority over all tax expenditures.

I believe we should tread carefully when expanding the fiscal powers of the Presidency. The line-item veto will change one of the fundamental checks and balances that form the separation of powers under the Constitution—the power of the purse.

The line-item veto hands over the spending purse strings to the President, whose cuts would automatically become effective unless two-thirds of both Houses of Congress override the veto.

The President would have no burden of persuasion while a Member would have the Herculean task of convincing two-thirds of his or her colleagues in both Houses to care about the vetoed project.

It is truly a task for Hercules to override a veto. Just look at the record—of the more than 2,500 Presidential vetoes in our history, Congress has been able to override only 105.

As noted so well in The Federalist Papers: ''the accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.''

Let us not try to score cheap political points at the expense of over 200 years of constitutional separation of powers.

Mr. REID. Mr. President, I rise in opposition to the proposed Line-Item Veto Act. The conference report does more to upset the balance of powers than any legislation this body has considered this year. This is not about curbing expenditures. It is body abrogating constitutional responsibility. It is about ceding unbridled spending authority to one individual in one branch of the Government. It should not be called the Line-Item Veto Act. Rather, it should be called the Presidential Spending Empowerment Act. It grants unprecedented amounts of spending power to one individual. Proponents attack discretionary spending as though this were the reason for our deficit. They know better. Discretionary spending becomes a smaller part of the Federal budget every year. The days of pork-barrel spending have long since passed. This concept is replaced by yielding the President authority to punish his enemies.

This is an invitation to unfettered politicization of the Federal spending process. It is exactly this kind of undue influence that the founders sought to avoid through separation of powers doctrine. It does not take the imagination of Machiavelli to see how this power could be used for nefarious purposes. This is particularly true in an election year. Look at the possible scenarios that could be in store. This would give a future incumbent President quite a political weapon. Perhaps it could be used to entice the endorsement of Members from key primary States. A President could agree to not cancel an item of new direct spending on the condition that a member endorse his candidacy. Conversely, he could punish a Member for deciding not to support him. Even in a nonelection year, this unfettered power could be unleashed for the rawest of political purposes. Why? Because this legislation creates an implied threat against all Members of Congress. This implied threat is vested in one politician. It can be exercised on any piece of legislation this body considers.

The significance of the conference report is not what is said, it is what is not said. It attempts to remove politics from the process. Unfortunately, it will have the exact opposite effect that its

supporters intend. It injects the rawest form of power politics into the Federal spending process.

The conference report creates enormous political arsenal and endows it in one individual. Its proponents say it will act as a shield against unnecessary spending. But it's really an axe that can bludgeon any legislator who dares to disagree with a President. This is not just about concentrating unprecedented amounts of power in one individual in one branch of government. It is about giving that individual a lethal political weapon. We are giving that individual license to use this weapon in whichever manner he sees fit.

Proponents of the conference report say this measure can be used as a surgical scalpel. I believe it more closely resembles a hovering guillotine. It is not just congressional spending authority that will be infringed. Our third branch of government, the judiciary, will have its independence placed in jeopardy.

I would encourage all Members to read an excellent piece on this issue in today's New York Times. It sets out some interesting arguments as to why the legislation is opposed by the judiciary. Many legal scholars are beginning to make their opposition known. Indeed, the Judicial Conference of the United States has spoken out against this measure. It said such authority posed a threat to the independence of the judiciary because a President could put pressure on the courts or retaliate against judges be vetoing items in judicial appropriations bills.

Judge Gilbert Merritt, chief judge of the Court of Appeals for the Sixth Circuit opposed this measure. Judge Merritt said it was unwise to give the President authority over the judicial budget because the executive branch was the biggest litigant in Federal court. I believe Judge Merritt is correct. The potential for conflict is obvious. All of us, at some point or another, have likely found ourselves in profound disagreement with a judicial ruling. But we realize there is a process in place for disagreeing with clearly wrongheaded decisions. We introduce legislation, hold hearings, and attempt to persuade our colleagues of the proposal's merits. None of us, individually, has the ability to influence a judicial decision we disagree with.

The conference report endows in one individual the tools with which to immediately demonstrate displeasure. Why don't we simply eliminate the lifetime tenure provisions from article III. Judges have good reason to fear this measure. They should be on notice that all future decisions could be subject to political appeal. The Supreme Court may ultimately have the final say but the President can ensure whether it has the paper on which to say it.

This political weapon can be exercised in many different ways. The executive branch may be litigating one of its policies in Federal court. This happens all the time in every administration. Consider the conflict that could arise if the administration receives an unfavorable ruling from a particular court. Now, the President could employ the power of the bully pulpit or appeal to Congress to handle the matter legislatively. With this new political weapon, he could also excise the appropriation for that particular court. This is not meant to cast aspersions on our future Presidents. It merely reflects the political reality that the Framers recognized when they wrote the Constitution.

Process for considering item vetoes binds this body to new rules that are overly burdensome and unduly restrictive. It will be very disruptive to the consideration of substantive legislative matters. We don't even know how this will play out and we are today being asked to accept a 10-hour time agreement. A large number of line-item vetoes may deserve debate. Are we all willing to enter into a 10-hour time agreement today? What kind of chaos are we binding ourselves to?

There is a great deal of thought and consideration that goes into writing an appropriations bill. Typically, the White House is involved throughout this process. It is not as if the administration reads appropriations bills for the first time upon their passage. Administration officials are actively involved in every step of the way. Why not really make this easier? Allow the administration to write the measures and schedule up or down votes in both bodies.

Presidential veto of targeted tax benefits was a key feature of the Senate-passed bill. The conference report attempts to define tax benefits by counting the number of beneficiaries. At best, this is disingenuous. A tax benefit is defined as an income tax deduction, credit exclusion or preference to 100 or fewer people. Why not limit the scope of the veto to appropriations or new direct spending that impacts 100 or fewer beneficiaries? Perhaps this was added in conference to gain the support of tax lawyers. Any good tax lawyer will be able to find an extra person or two to meet the sufficient number of beneficiaries.

I believe that is why this body explicitly rejected the concept of numerical beneficiaries earlier. Different types of taxes are treated differently. Interestingly, other taxes such as estate and excise taxes would not be subject to a Presidential rescission. The report also excludes tax breaks that target persons owning the same type of property. Thus a tax benefit to owners of 1997 Rolls Royces would not be subject to a veto since all persons owned the same type of property.

Today, less than 7 percent of vetoes are overridden. If this measure passes, veto overrides will likely be nonexistent. This Presidential political weapon will be used against regions, States, or congressional districts. There, of course, will never be enough vetoes to override. This is a far worse bill than the one which made it out of this Chamber a year ago. That bill included a provision that allowed 60 Senators to prevent an item from being singled out for a veto. The conference report requires two-thirds of both the Senate and the House to override a veto. Thus, the President needs only 34 percent of one House in order to rescind appropriations the majority of Congress had previously voted to approve.

This is an unprecedented amount of veto power to endow in one individual. This Senator contends it is an unconstitutional delegation of legislative power.

Many legal scholars claim we have little to fear because this act will be ruled unconstitutional in the courts. I do not believe that is a chance worth taking. I realize the majority party is under a lot of pressure to complete its so-called Contract With America. But in its zeal for closure is it really willing to pass clearly unconstitutional acts? Are we willing to now discount and discard the doctrine of separation of powers? And what are the consequences?

Perhaps it was best stated by the Senate's great constitutional scholar, Senator BYRD, in an earlier debate: ''History shows that when the Roman Senate gave away its power of the purse, it gave away its check on the executive.'' As for the line-item veto eliminating wasteful spending, Senator BYRD said it is ''analogous to giving cyanide for a cold.''

Who are we, the benefactors of these great constitutional rights, to sit in judgment of our Founding Fathers? If they were so right then, could we be so wrong today?

Mr. BIDEN. Mr. President, I have long supported an experiment with a line-item veto power for the President. Over a decade ago, I introduced my own plan for a line-item veto, with Senator Mattingly. Since then I have cosponsored several similar plans, in particular those offered by my distinguished colleagues Senator HOLLINGS and Senator BRADLEY.

I have held this position for all these years, Mr. President, not because I believe the line-item veto will solve our deficit problem. No single procedural change can do that.

I support a line-item veto because it will, at the margins, shift the incentives now in our system to attach special-interest spending to our appropriations bills. To rein in that practice, Mr. President, we must expose it. The line-item veto will give the President a tool, if he chooses to use it, to raise the profile of wasteful, special-interest spending—to expose it to the light of public scrutiny.

The need to track down and remove wasteful spending is not new, Mr. President, but it has never been more important than now. As we continue down the road toward a balanced budget, we must reserve every dime of taxpayers' money for the most important

priorities of this country. Now, more than ever, waste in one program will require cuts in more deserving areas.

So we must do all we can do to change the incentive to smuggle such spending into appropriations bills in the first place, or to give the President the power to cut it out once it gets there.

Mr. President, the version of the line-item veto that I have consistently supported is not the one before us now. Nevertheless, I will vote for this line-item veto plan today, because I believe that it can be a useful check on wasteful spending, at a time when we must subject every dollar we spend to the most careful scrutiny.

Mr. President, I want to take a few minutes to explain the difference between the version I have consistently supported—the one, I must add, that we passed out of the Senate last year—and the version here before us today. I have long held that separate enrollment is the best approach, in contrast to the enhanced rescission plan before us now. But what do those fancy titles mean?

The separate enrollment approach to the line-item veto is the one that I have supported, and the one that I think most people have in mind when they think of a line-item veto. Quite simply, separate enrollment requires that the Congress take each item in the spending bills we pass and send them to the President separately, instead of lumped together as we do it now.

We used to send individual spending items to the President separately, back before the Civil War. I believe that the separate enrollment approach would restore a relationship between Congress and the Executive that was upset by the practice of lumping those items together. To that extent, it would be less disruptive of the constitutional relationship between the branches of our Government.

The way we do it now, we send the President every item for national defense, for example, in a single spending bill. If the President believes that there are too many tanks, or too many trucks, or too many missiles, he must veto the entire national defense bill to cut out the spending that he doesn't want.

We write bills that way on the bet that the President will accept additional spending as the price of getting our national defense or other basic needs paid for.

And, we must admit, Mr. President, we write bills that way because it serves the needs of individual Members of Congress to have their special projects—that on their own merits, in the cold light of day, could not muster a majority vote—to have those special projects pulled through the process by the locomotive of essential legislation.

By sending each item of spending to the President as individual bills—by separate enrollment of each item—Congress would expose each of those items to the scrutiny it deserves, would remove the camouflage of the larger spending bills.

The modest hope is not that the President will, willy-nilly, cut and slash special-interest items.

Rather, the expectation of those of us who have promoted this idea is that Members of Congress—confronted by a President with this new power—would choose not to include those special interest items that cannot pass the threshold of public scrutiny.

That is essentially the version that we passed out of the Senate last year, Mr. President, with one important addition. We included special interest tax breaks among the items the President could veto. Those tax expenditures lose money from the Treasury just as surely as any spending program.

And as for those items vetoed by the President, the normal constitutional procedures would apply—two-thirds majorities of each House would be required to override the veto, to restore the spending that the President has cut.

I have supported that approach as the one that least disturbs the constitutional relationship between the President and Congress, particularly on the crucial issue of the power of the purse.

I was heartened when that was the version passed by the Senate last year.

By the same token, Mr. President, I am less happy about the version before us today. But because I am still convinced that we need to improve our capacity to discourage if possible, and to cut out if necessary, any wasteful, special-interest spending, I will vote for this version.

The line-item veto bill before us today provides for a procedure that is more correctly known as enhanced rescission. It greatly transforms a Presidential procedure that right now has virtually no teeth—the rescission.

Currently, the President may tell Congress that he doesn't want to spend funds for one or more items in a spending bill that he has signed into law. But that will have no effect unless the Congress chooses, on its own, to pass a rescissions bill that may or may not include the items specified by the President.

If Congress chooses not to act, the President remains obligated to spend those funds in the legislation he has signed into law. So right now the rescission power doesn't amount to much, Mr. President, unless Congress decides on its own to make it law.

The bill here today would change that, would put real teeth in the rescission power. It would give the power of the law to a President's decision not to spend money on those items he chooses. That decision would become law unless Congress passed a specific bill to disapprove of his action. If Congress did not act, then the President's decision to cut those items would stand.

If Congress did pass a bill that disapproved of the President's cuts, the President could then use his veto power, which would require a two-thirds majority of each House of Congress to overturn.

This is a powerful new tool in the hands of the President. That is why I have always held that we should experiment with the line-item veto—that we should set a date certain on which the legislation will sunset. This line-item legislation provides for an 8-year experiment, after which it will terminate unless Congress agrees that the experiment has produced more benefits than costs.

This is longer than I think is necessary—particularly if we discover unintended consequences—but it does provide for two Presidential administrations over which to test the merits of this proposal.

I am more disappointed that the President's ability to cut special interest tax breaks has been severely weakened in conference with the House. The remaining provision would apply to only a few tax items—in fact, with clever tax lawyers on the job, it could well apply to virtually no tax breaks.

So, Mr. President, like so much legislation we consider and that becomes law, this line-item veto bill advances a worthy cause—cutting out waste and special-interest spending—but not in the ways that all of us may agree with. As someone who has for years advocated the separate enrollment method of line-item veto, I wish we had chosen that route.

But there is a more fundamental question—Will we give the President a power that will expose congressional spending to a higher level of scrutiny? Will we take an additional step to prevent the inclusion of special-interest spending in our appropriations bills? I am willing to take that step, Mr. President, and will vote for the conference report.

Mr. SMITH. Mr. President, I rise in strong support of the line-item veto bill before the Senate today, and urge my colleagues to pass this overdue measure. As a long-time opponent of pork-barrel spending, I am glad we are taking this first small step toward fiscal sanity.

When I attend a town meeting, or hold a briefing on the Federal budget, I often hear a common sentiment: ''Why does Congress want to change Medicare, or education, or whatever, when we are spending $5 million on Hawaiian arts and crafts?'' It is a question that cannot be answered. Pork-barrel spending may constitute a relatively small portion of the overall budget, but it represents a very symbolic part of the budget. If Congress cannot cut the little spending items, how on Earth can we make the difficult decisions on the larger programs?

Will the line-item veto balance the Federal budget? Of course not. But it will help restore discipline to our budget process. It is no secret that special projects and narrow interest provisions are often included in large spending

bills. We often see $1 or $2 million projects tucked away in multibillion budget measures. A Senator or Congressman will issue a press release about the wonderful project, and then feel compelled to vote for the overall bill. Slowly, but surely, the spending bills begin to add up and the problem becomes worse. The pork-barrel spending is the grease that allows the budget process to move forward. And that budget process has led this Nation to a $5 trillion national debt.

The line-item veto bill will give the President—who has a national constituency with a national interest—the tool he needs to cut projects that serve a narrow constituency with a special interest. The legislation before the Senate today allows the President to veto appropriations, targeted tax provisions, and new entitlement spending. Any of these provisions, if passed separately, are now subject to a Presidential veto and a two-thirds override requirement. The line-item veto bill is a natural and simple extension of that constitutional power. Projects worthy of scarce Federal tax dollars should stand or fall on their own merit, not on the merit of a larger unrelated bill.

Mr. President, I have supported and cosponsored line-item veto legislation for more than a decade. It has been a long and arduous fight. I, for one, am glad that the fight is finally over. I commend my colleagues—Senator MCCAIN and Senator COATS—for their hard work on behalf of this landmark legislation. This line-item veto bill before the Senate today will certainly stand the test of time.

Mr. ROCKEFELLER. Mr. President, I am a proponent of responsibly reducing the deficit, as are many of my colleagues. I, too, want to eliminate wasteful spending. But this conference report on the line-item veto bill is not the right way to ensure deficit reduction or responsible fiscal management in my view.

As articulated so poignantly by my colleague from West Virginia, Senator BYRD, the line-item veto legislation raises many constitutional problems and it substantially alters the balance of power devised by the Framers of our Constitution.

Before supporting such a dramatic change in the balance of powers, we need to examine it in light of what it really offers our country.

Giving a President broad power to cut discretionary spending concerns me in theory, but it troubles me even more to think about its potential effects in practice. A President may hastily veto substantive provisions of a spending bill, which he considers wasteful, but which really are essential programs for States or regions. One person's perception of waste or pork may be another person's funding for roads, schools, needed housing, or rural hospitals. Or a President could even wield a line-item veto as a political tool to intimidate a particular Member or groups of Members.

A specific example is the recent history of funding for the Appalachian Regional Commission [ARC]. Recent Republican Presidents sought to eliminate the Appalachian Regional Commission [ARC] from the budget, but a bipartisan group within Congress maintained this important program to promote economic development in some of the poorest counties of our country. The ARC provides basic funding for infrastructure and economic development.

In representing West Virginia's interest, I do not believe that Congress should give any President free range to cut discretionary spending. Under the line-item veto, a President could veto spending for the ARC, or other discretionary programs ranging from highway projects to housing programs.

It is important to note that the present system already offers a way for the President to express his dissatisfaction with provisions in spending bills, known as the rescission process. Although this process might need to be streamlined and simplified, the President already has the ability to call for the rejection of specific programs within spending bills. Through the rescission process, the President can call on Congress to make more immediate cuts in areas which he thinks are wasting taxpayers' money. The President can single out items in spending bills that he opposes, and if Congress approves the budget cuts are made immediately.

I agree that Congress needs to chart a careful course for deficit reduction and economic growth, and I continue to vote for cuts in specific programs where I believe Congress has wasted taxpayer money. I do not, however, want to risk the careless elimination of critical programs which benefit West Virginia and other States. And I do not want to irrevocably alter the balance of power between Congress and the executive branch which was enshrined in our constitution over 200 years ago. I think Congress has duty to be excruciatingly careful when fundamental rewriting of our Constitution is being considered. This conference report has not been given proper consideration and I disagree with its intent on principle. I oppose passage of this conference report.

Mr. GRASSLEY. Mr. President, I am proud to have this long awaited and unique opportunity to address the Chair about a successful conference report on a line-item veto.

Some of us have spent much of our congressional careers fighting against wasteful spending. Under present law, the Chief Executive often cannot join in the battle against waste without the risk of destroying the good along with the extravagant. This line-item veto conference report succeeds in allowing a responsible Chief Executive to join our team of responsible legislators. Indeed, the line-item veto will allow a responsible President to join us in weeding the peoples' legislative garden.

With this line-item veto, a responsible President can attack and cancel out entire dollar amounts in appropriation bills. He may not merely reduce a dollar amount; He may only cancel it entirely. With this line-item veto, a responsible President will attack and cancel out latent direct-spending provisions that would increase future spending. Thus, we will help prevent future deficit increases before they even begin; first, by eliminating a wasteful provision, and second, by dedicating any savings from operation of the line-item veto to a special lockbox for deficit reduction.

In the area of tax expenditures, a responsible President can attack certain flagged and frivolous tax legislation. This line-item veto will instruct the nonpartisan Joint Committee on Taxation to identify and flag any limited tax benefits that may exist in future conference reports of future tax bills. This conference report on the line-item veto defines limited tax benefits as any tax expenditures that would both, lose revenue either in the first year or over the first 5 years, and benefit 100 or fewer persons Then, Congress would add a list of these limited tax benefits to the conference report as a matter of law.

If the Joint Committee on Taxation looks, but does not see, any limited tax benefits, then it may issue a clean bill of health upon the related tax legislation. If the Joint Committee on Taxation does not look for any limited tax benefits, then the Chief Executive may himself look for the limited tax benefits. He would use our same objective measure outlined in the conference report.

Having found waste, a responsible President may effectively take out his ruler and draw a line through any offending legislation. After operating a line-item veto, the President would send a special message back to Capitol Hill outlining his actions. Both Houses of Congress would refer the vetoed line items to the appropriate committees.

The operative Senate committees may then report out a disapproval bill containing the vetoed line items. The Senate would listen to only 10 hours of debate and amendments before voting on a disapproval bill. Thereafter, the President may again see the same legislation because the process would simply start over. The President would then have the Executive powers offered by this line-item veto conference report and article I, section 7 of the Constitution.

Like the Constitution, this line-item veto conference report has many proud cosigners. I want to thank the chairmen and ranking members of the Committees on Governmental Affairs and the Budget. I also want to thank Senators MCCAIN and COATS for their efforts and commitment. Especially for his attention to the line-item veto as it may affect future tax legislation. I want to thank Senator ROTH, the able chairman of the Committee on Finance. Finally, I want to thank all those with whom I have always joined

in our tireless efforts to stamp out the Government waste of taxpayer capital.

This is a great day indeed. I urge all of my colleagues to join in support of this conference report on the line-item veto.

Mrs. MURRAY. Mr. President, I take the floor to oppose the so-called line-item veto legislation before us today. I regret I cannot support this conference report, but unfortunately this report is careless, highly questionable and possibly unconstitutional. Mr. President, I support the line-item veto proposal submitted by Senator BYRD. His expedited rescission proposal was well-written and made good common sense, but unfortunately, it was not accepted by the Senate.

I know all too well the abuse that can arise through broad, sweeping line-item veto authority. Mr. President, I served in the Washington State Senate prior to coming to the U.S. Senate. My home State arms its executive with line-item veto authority, and while serving in the State legislature I witnessed, first hand, the horse trading that results by giving the State's executive this authority.

In my home State, the line-item veto does not deter spending. Rather, it encourages more spending. It puts legislators in the position of having to accept the Governor's priorities in order to make sure their legislative priorities are not vetoed by the Governor.

As you know, Mr. President, this debate essentially was spawned out of our desire to reduce Government waste and balance our Nation's budget deficit. I do not think there is a single Member in this body that does not want to reduce the Nation's budget deficit. However, I have great difficulty turning over my responsibility and Congress' fiscal responsibilities to the executive branch. Mr. President, the line-item veto is a budget gimmick, and it simply passes the power of the purse from Congress to the President.

Since 1993, we have cut the Nation's budget deficit in half. This is commendable work. However, it was difficult work that required tough decisions. Congress and the Clinton administration chose to reduce and cut hundreds of Federal programs. This was not easy, but it is what we were elected to do. We will get our fiscal house in order once we set our minds to it. We do not need a line-item veto. We need courage. We should not shrink from our constitutional responsibilities. We should accept the challenge.

Mr. President, earlier today I listened to the elegant words of Senator BYRD. Senator BYRD is a great orator, respected legislator and an excellent teacher—especially when it comes to the constitutional issues surrounding the line-item veto. I hope my colleagues listened to his words, because there are some real constitutional issues that need to be addressed because of this legislation.

This legislation disrupts the delicate balance of powers laid out by our Founding Fathers. It shifts an enormous amount of power to the President of the United States—directly conflicting with Congress' constitutional duties. And, as written, this legislation gives the President and a one-third minority in one House the power to veto legislation a majority of Congress approved. It turns the idea of checks and balances on its head.

Mr. President, I also have grave concerns with the language pertaining to targeted tax benefits. This language is cleverly written in a way that ultimately prohibits the President from vetoing new targeted tax benefits. If we want to grant the President a line-item veto, let us at least do it the right way. Let us at least let the President strike new tax expenditures.

Moreover, I urge all my colleagues from small States to read this legislation carefully, because as it is written, the President has the power to strike very specific language including charts and graphs. For instance, the President would have the power to strike funding for a single State if an appropriations bill or report includes a chart breaking out spending per State. We know the President is not going to strike funding from electoral-vote rich States. But, what keeps the President from cutting funds in smaller States?

Mr. President, this again reminds me of the horse trading I experienced in my home State legislature. This legislation puts legislators in the awkward position of having to protect congressionally approved legislation from the President's veto pen—legislation that was debated, considered and eventually agreed to by Congress—agreed to the way our Founding Fathers envisioned the process would work, and the way our constituents expect us to govern.

In no way did our Founding Fathers expect the President to unravel legislation that was crafted through compromise by both the majority and the minority.

Mr. President, there is a right way to craft this legislation. It should be written clearly and carefully—without ambiguity. We should craft legislation that doesn't exempt specific tax breaks, one that doesn't allow a President to attack entitlements, and one that doesn't hold small States hostage.

So, Mr. President, I urge my colleagues to vote against this legislation. The line-item veto is not the solution to our deficit problems. We know what needs to be done to reduce the deficit, and we have done it here on this floor over the past 3 years. We know the line-item veto is not the tool needed to accomplish that goal, but rather, just a feel-good gimmick that puts off the tough decisions.

Mr. FEINGOLD. Mr. President, this issue is not simple, nor is it easy.

If it were, there would be a larger consensus on how we should proceed in this area, if at all.

I supported the version of S. 4 that passed this body—the so-called separate enrollment approach. Though that legislation was flawed, I was willing to support that experimental line-item veto authority to provide the President with some additional authority to eliminate inappropriate spending.

I do not believe the line-item veto is the whole answer to our deficit problem, or even most of the answer, but it certainly can be part of the answer.

The legislation before us today, too, is flawed, but I am willing to give this new mechanism a chance to work, and to see it tested over the next several years. Like the version of S. 4 that passed the Senate, this measure also has a so-called sunset clause which terminates the expanded veto authority unless Congress takes action.

If the Congress decides, which it may well do, that we have gone too far in delegating authority to the President, the sunset clause will make it much easier to terminate the experiment, if necessary. The burden will be on those who want to retain the authority.

Mr. President, in the end, that sunset clause allowed me to support a measure with which I am far from satisfied. Without a sunset clause, Congress would have to pass a bill to repeal the line-item veto authority. It is likely that any President would veto such a bill, and unless two-thirds of the members of both Houses were to override that veto, the President would retain this extraordinary new power.

Mr. President, though the continuing Federal budget deficits justify granting this temporary authority to the President on a trial basis, I do have serious concerns about this proposal, which I want to highlight, and will continue to monitor. Possibly my biggest concern is the effective threshold of two-thirds vote in each House to overcome this new expanded veto authority. That kind of threshold is provided in the Constitution for entire bills, but extending that authority for individual sections of a bill may be problematic. There are many uncertainties in this new authority that we are providing the President, and no one can anticipate all the potential abuses that might flow from this new authority.

Though we have no experience at the Federal level, those Members who have served in State government may have seen the use of line-item veto authority at the State level. Indeed, much of the support for a Federal line-item veto stems from the State experience.

But, Mr. President, few other States, if any at all, have witnessed the abuses of line-item veto authority that we have seen in Wisconsin. That abuse has been bipartisan—Governors of both parties have used Wisconsin's partial veto authority in ways it is safe to say no one anticipated when that authority was first contemplated. For example, Mr. President, Wisconsin's current Governor, Governor Thompson, has used the veto authority not only to rewrite entire laws, but actually to increase spending and increase taxes.

The two-thirds threshold compounds the uncertainty about possible abuses

by making it that much more difficult for Congress to respond to that possible abuse.

Mr. President, another serious flaw in this measure are the provisions relating to tax expenditures. They are far from adequate. The language in the Senate-passed version of S. 4 relating to tax expenditures has been weakened significantly, essentially blunting this authority as a tool for restraining that area of spending that is among the largest and fastest growing, and that includes unjustified subsidies to some of the wealthiest individuals and corporations in the world.

Mr. President, tax expenditures contribute greatly to pressure on the deficit, and if any area should be subjected to the scrutiny of line-item veto authority, it is this one. The failure of this proposal to target abuses in this area is a serious flaw, and I regret the special interests that generated some of these abuses in the first place are exempt from this new Presidential authority.

Mr. President, I was disappointed, too, that the emergency spending reforms the senior Senator from Arizona [Mr. MCCAIN] and I incorporated into the Senate-passed version were dropped from this measure. That provision limited emergency spending bills solely to emergencies by establishing a new point of order against nonemergency matters, other than rescissions of budget authority or reductions in direct spending, in any bill that contains an emergency measure, or an amendment to an emergency measure, or a conference report that contains an emergency measure.

The provision also featured an additional enforcement mechanism to add further protection by prohibiting the Office of Management and Budget from adjusting the caps on discretionary spending, or from adjusting the sequester process for direct spending and receipts measures, for any emergency appropriations bill if the bill includes extraneous items other than rescissions of budget authority or reductions in direct spending.

As we consider ways to empower the President to veto unjustified spending through this new authority, it only makes sense to enact reforms that prevent those abuses from passing in the first place. The emergency spending reforms that Senator MCCAIN and I included in S. 4 did just that, and I regret they were not included in this proposal.

I understand, however, that commitments have been made to revisit this provision in separate legislation. The emergency spending legislation previously passed the House by an overwhelming vote and I am hopeful that we will soon be able to overcome the resistance to this provision and have it enacted into law as well.

Mr. President, the basic structure of this particular line-item veto authority also raises problems. Though it may be less cumbersome than the so-called separate enrollment approach envisioned in S. 4 as it passed the Senate, the new enhanced rescission approach could provide the President with more rescission authority than was intended.

In particular, the shift from Congress to the President in defining the precise material to be vetoed is potentially significant. Instead of vetoing or approving individuals minibills, as under the separate enrollment approach, the President decrees certain actions in the nature of rescissions—actions which effectively are given statutory authority because they are surmounted only by enactment of a disapproval bill.

The scope of these Presidential decrees are limited by the restrictions set forth in this bill, and though the intent of those proposing this new authority may be clear enough in their own minds, there cannot be one hundred percent certainty about the true scope of this new authority until it is actually put into effect. The unintended or even unimagined consequence of this new authority may be its biggest flaw.

This is just what happened in my own State. It is difficult to argue that the original sponsors of Wisconsin's partial veto authority ever intended that a future governor would be able to veto individual words within sentences or even individual letters within words, yet that is precisely what happened.

Successive court decisions gradually expanded the partial veto authority for Wisconsin's Governors, to the point that whole new laws could be created with the veto pen.

Mr. President, could the temporary authority which this measure grants the President be abused in this fashion? Though I do not believe it will, we cannot be certain about what some court might rule in interpreting the restrictions spelled out in the bill.

In some instances, the proposal before us allows the President to exercise his new authority based on committee reports or the statements of managers, neither of which have the force of law, and neither of which have ever been the subject of a vote in either House. That is troubling.

I am disturbed, too, by the language in this proposal regarding so-called items of direct spending. In defining these items, the measure refers to specific provisions of law.

Mr. President, this definition is not at all self-evident. Is a provision of law a numbered section, or can it be an unnumbered paragraph as well? How small a unit of entitlement authority does the proposal intend to expose to the new Presidential authority? For example, if a clause in a sentence defines new entitlement authority in some way, can that clause be canceled without taking the entire sentence with it? Or, can new entitlement authority be limited by the selective cancellation of one word if doing so meets the other stated formal requirements of the measure?

The proposal does not address that issue. It only mentions the words ''specific provision of law'' without further definition.

As someone who has seen just how creative a Governor can be with partial veto authority, this is a matter of serious concern to me.

Mr. President, there are a few safeguards built into this proposal that provide some comfort in this regard. As I noted before, the new authority sunsets in 8 years. We will have what amounts to an 8-year trial period in which we can monitor this new Presidential authority, and we will. Eight years represents two complete Presidential terms of office, and several election cycles within both Houses, ensuring a diverse set of partisan combinations under which this new authority can be tested, and enhancing the possibility that it will be used under different circumstances and with different ideological intent.

Also, it should be noted that this new authority is established by statute, not as part of the Constitution, thus the measure avoids magnifying these potential problems by making a permanent change to our basic law. To the extent that Congress can selectively control this new authority in subsequent statutes, even prior to the expiration of the proposal before us, the statutory approach to the line-item veto or enhanced rescission authority is much less restrictive than a constitutional amendment.

Nevertheless, Mr. President, we cannot be certain how this proposed authority will be used, no matter how carefully we draft the restrictions on that authority. Those who support this measure bear a special responsibility in this regard. And to that end, should this measure become law, I intend to establish a regular review process to monitor how the new authority is used, how it is misused, how much deficit reduction is produced, and lost opportunities for deficit reduction.

Though temporary, this delegation of authority is significant, and close and continuing scrutiny is warranted, even necessary.

Mr. President, the debate we have had on this issue for over a year has been instructive for me. For some, the passage of a line-item veto authority for the President will only mean they can scratch it off a list, and move on to another issue.

But this issue does not end with our vote, it begins.

We are about to embark on an important experiment. Whether for the benefit of the country and our democratic institutions remains to be seen, but I believe it is an experiment worth performing.

I congratulate the senior Senator from Arizona and the Senator from Nebraska [Mr. EXON] for their work on this measure. I thank them especially for their past efforts on behalf of the amendment I offered to clean up the emergency appropriations process.

Though it was not included in the final version of this proposal, I very much appreciated their courtesy, and I look forward to working with them to find another vehicle for that worthy reform.

I yield the floor.

Ms. MOSELEY-BRAUN. Mr. President, our system of government is based on a separation of powers and checks and balances. That is the way the Founding Fathers structured it, and it is a system that has fostered America's greatness for over 200 years. Yet, this bill would fundamentally change and unbalance that system by transferring power from Congress to the President.

Some argue that this bill is unconstitutional. In a letter to Congress, L. Ralph Mecham, secretary of the Judicial Conference, stated that he fears that this bill will violate the separation of powers. He writes, ''The doctrine of separation of powers recognizes the vital importance of protecting the judiciary against interference from any President. This protection needs to endure. Control of the judiciary's budget rightly belongs to the Congress and not the executive branch.''

Furthermore, an article in today's New York Times stated that the line-item authority poses ''a threat to the independence of the judiciary because a President could put pressure on the courts or retaliate against judges by vetoing items in judicial appropriations bills.'' The article stated that Judge Gilbert Merritt, chairman of the executive committee of the Judicial Conference of the United States, stated that ''judges were given life tenure to be a barrier against the winds of temporary public opinion. If we don't have judicial independence, I'm not sure we could maintain free speech and other constitutional liberties that we take for granted.''

It is not clear what the Supreme Court will find when this law is challenged. But what is clear to me is that this bill is anti-constitutional. It is counter to the philosophy of the Constitution. The Constitution clearly separated each branch of government, giving each specific duties—and did so for a reason.

If one reads the Constitution, it is clear that the Framers deliberately placed the power of the purse in the hands of Congress. Article I, section 8 of the Constitution states, ''The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States.''

Power over the purse has consistently rested in the hands of the Representatives and Senators of our country. This power is critical in maintaining our system of checks and balances. The measure before us today would shift that power away from Congress and put it in the hands of the President. It allows the President to unilaterally change a law after it is enacted—to cut off spending Congress has deemed necessary.

Moreover, this bill is contrary to its intended purpose: Deficit reduction. Some of my colleagues did not support the balanced budget amendment to the Constitution, but I did. I supported it because it covers every dollar of spending and taxing. This bill does not. Furthermore, the balanced budget amendment did not upset the balance of powers between the branches. This bill does.

There is a cliche that to every problem there is a simple wrong solution. Do we have a deficit problem? Yes. Will this bill solve our fiscal crisis? No. This bill is the wrong solution to our deficit problems. It is almost solely aimed at discretionary spending, which is clearly not one of the major causes of the budget crisis the Federal Government is facing.

I served on the Bipartisan Commission on Entitlement and Tax Reform. If we do not act, by the year 2012 entitlement spending will outstrip revenues. So discretionary spending could be cut to zero and still not solve our problems. Domestic discretionary spending has not grown as a percentage of the GDP since 1969, the last time we had a balanced budget. Domestic discretionary spending comprises only one-sixth of the $1.5 trillion Federal budget, and that percentage is steadily declining.

In practice this bill will have a minimal impact on the deficit. Yet this bill will have a high impact on the level of the public's cynicism because it will not solve our country's budget crisis. Congress is already having difficulty passing its 12th continuing resolution and the American people already have doubts about Congress' ability to pass funding measures. To reaffirm our commitment to the American people's priorities, we should remind ourselves of what we swore to do when we entered office: to uphold the Constitution. This line-item scheme violates the philosophy of that document.

Spending authority rests primarily with Congress because our Nation's Founders thought that that was the best small ''d'' Democratic thing to do. 535 Members of Congress by definition are closer to the people than the President. Members of Congress are elected from all over the country reflecting their constituents' interests, be they urban or rural. Can one executive reflect the needs of our Nation's varied constituencies better than a Member of the House who has to run every 2 years? The President, as stipulated in the Constitution can only face the people twice, and one of those times is before he takes office.

Part of our Nation's success is due to our healthy mistrust of the centralization of authority. The Founding Fathers did not create a unitary system like in France. They built a country based on a union. As Jefferson once said, ''the way to have good government is not to trust it all to one, but to divide it among the many, distributing to every one exactly the functions he is competent to perform.'' The Founders thought that Congress was competent to legislate our spending bills, not the executive. More than 200 years of success is hard to argue with.

As we all know, it can take several months of work to get a bill signed into law. Under current law, the House and Senate can pass a bill and then send it to conference where the differences between the House and Senate versions of the bill are resolved. Oftentimes conferees spend hours, even days and weeks, working to resolve differences, so that both Houses can support the end product. This can be a delicate proceeding, calling for compromise and flexibility.

Upon completion of conference the House and Senate vote on the conference report and send the bill to the President for signature. Under this legislation, if the President decides to sign the bill, he could then decide to strike out, for instance, specific spending provisions in an appropriations bill. Under this bill, the President would also have the power to line-item out items that are listed in graphs, tables, charts, conference committee's statement of managers, or portions of a committee report not superseded by the conference report. The scope of possible rescissions is enormous.

If Congress disagreed with the President's rescissions, they could pass a disapproval bill which would have to be passed by both Houses, get through conference, and be passed again. Should the President proceed to veto to the disapproval bill, it would take two-thirds of the Members in each Chamber to override the President's veto. Since we have not even been able to pass a budget this year, I tremble to think what adding additional steps to the process will do to Congress' ability to act.

Clearly this is the most significant delegation of authority to the President that we have seen in over 200 years. If Congress passes this conference report we will abdicate our authority guaranteed to us under the Constitution, and give it to the President. Moreover, although this bill seeks to solve our fiscal problems, it could also serve to indirectly increase spending. For instance, if the Administration sought to increase spending for a mandatory program, he could lobby the Member to support his initiative by threatening to line-item out all of the appropriations for projects in that Member's district. As my friend Ab Mikva wrote in the March 25th edition of Legal Times, ''For those of us who think that the executive branch is strong enough, and that an imperial presidency is more of a threat than an overpowering Congress, the current balance of power is just right.''

Mr. President, the Founding Fathers carefully wrought our Constitution to include the doctrine of separations of powers. I believe that this conference

report goes against that philosophy and ultimately, will have little effect on solving our fiscal problems, for these reasons, I will not support this report.

Mr. LAUTENBERG. Mr. President, I rise in strong opposition to this conference report. There is a right way and a wrong way to provide the President with a line-item veto. This is the wrong way.

Mr. President, I have supported a line-item veto in the past. I believe that the President should have greater authority to weed out wasteful tax breaks and unnecessary weapon systems.

But this legislation goes too far.

I have three major objections to this conference report.

First, this legislation cedes too much power to the President. Under this proposal, any President and one-third plus one in the House can stop any appropriated item. This legislation goes much further than the so-called separate enrollment bill that passed the Senate. The legislation before us, in effect, allows the President to veto report language and tables in Committee reports. This means that the President can veto airport improvement funds for Newark but keep funds for Kennedy and LaGuardia airports. And the only way to override this type of veto is to get two-thirds of the Members in both House to support an individual item—which is highly unlikely.

The President of the United States already has awesome constitutional power. Look at what has happened in the past 6 months.

The President vetoed a Republican budget that made huge cuts in Medicare and Medicaid to pay for tax breaks for the rich. He stopped this cold.

He also vetoed a welfare reform bill that would have doomed 1.5 million children to live in poverty.

Finally, he vetoed spending bills that made deep cuts in education, environment, and community policing.

Mr. President, the Congress was never able to override these vetoes. This demonstrates how powerful the Presidency can be when it comes to vetoing unfair budget priorities. We should not provide the chief executive with this new power on top of the tremendous power he already possesses.

Second, this legislation makes a mockery of applying the line-item veto to tax breaks. The Senate bill originally allowed the President to use the line-item veto to stop some tax breaks. These breaks were defined far too narrowly. But even this language did not survive conference.

This conference report only allows the President to veto tax items that affect fewer than 100 persons. This means that Congress can pass a tax break that only applies to people with incomes over $1 million and the President could not single this out. Furthermore, the language also exempts other classes of persons from the tax provisions of the bill. One such exemption is property. Therefore, if Congress passed a tax break for 99 owners of a certain type of yacht, the President could not veto this provision.

In summary, this legislation allows the President to use the line-item veto to reject investments in education and the environment but not to reject tax breaks for millionaires. This is preposterous.

Finally, I object to the Republican political hypocrisy that went into choosing an effective date and sunset date for this legislation.

This bill was a part of the so-called Contract With America. The House passed its version of this bill on February 6, 1995. The Senate passed its version on March 23, 1995.

During debate on this legislation, I heard many Republicans in both Houses say that they were so committed to passing this legislation that they were even willing to give this power to a Democratic President. They argued how important the line-item veto was to cut out wasteful spending and unnecessary tax breaks.

Despite all of the clamoring by the Republicans, they began to drag their feet so that they would not have to give this power to President Clinton. They delayed naming conferees on the bill. They stalled on calling a meeting for the conferees. They kept dragging it out so that they could pass the fiscal year 1996 appropriations bills before the line-item veto bill became law.

During this period of inaction, the Republican majority sent President Clinton a pork-laden Defense appropriations bill that spent $7 billion more than the Pentagon wanted. This is when President Clinton really needed the line-item veto—so he could reject this $7 billion in unnecessary spending. But he did not have this tool then. The Republicans were simply playing politics with the line-item veto bill.

Now, we find ourselves with an entire new set of dates in this legislation. This bill will now go into effect on January 1, 1997 and it will last 8 years.

Mr. President, this is so blatantly political. But this is not the reason why we should reject this conference report. We should vote this down because it cedes too much power to the President and renders him powerless to fight tax breaks to the wealthiest Americans.

I urge my colleagues to reject this conference report.

I yield the floor.

Mr. CRAIG. Mr. President, I rise in support of S. 4, the conference report on the Line-Item Veto Act. The Senate is now wrapping up a long-overdue and historic debate.

I note that two words in particular sound very good in this debate: conference report. There must be many Members in both the Senate and the other body who have wondered if they would ever hear those two words used in connection with the line-item veto.

I want to recognize and commend the leadership and longstanding commitment that Senators MCCAIN and COATS have shown on this issue, as well as Chairman DOMENICI and Chairman STEVENS, for their work in shepherding this legislation through committee, earlier passage in the Senate, and now, the conference process.

I also want to express my appreciation for the leadership of our distinguished majority leader, Senator DOLE, in bringing this vital reform to the floor. His name was at the top of this bill when several of us first introduced S. 4 on the first day of this 104th Congress, January 4, 1995, and he has been solidly committed to passage of this landmark legislation.

There are three principal reasons to enact this kind of reform:

First, a line-item veto will promote fiscal responsibility.

This is a major step on our way toward a balanced budget.

For more than 20 years, since the President was hamstrung by some of the lesser provisions of the 1974 Impoundment Control and Budget Act, congresses have ignored with impunity most of the Presidential recommendations to rescind spending authority for individual items.

Now, at least some obnoxious, unwarranted spending will be struck down.

Opponents of this bill have argued that it would lead to more spending, as Presidents use the leverage of the line-item veto to get more spending for their pet programs, or as Congress loads still more spending into bills, in hopes that at least some of it will get by the President. Alternatively, they argue that Presidents will abuse this power and fundamentally distort the balance of constitutional power between the executive and legislative branches.

But the histories of the 43 States that have given their Governors this veto authority do not bear out these dire—and purely theoretical—warnings.

The experience of the States with the line-item veto, including that of my State of Idaho, has been uniformly favorable.

And, looking back over the last two or three generations, we see that State governments have increased spending and taxes at much lower rates than the Federal Government.

It is an amazing concept for some in Washington, DC, but, when you assign someone responsibility—in this case, the responsibility that comes to chief executives with line-item veto authority—they often live up to high expectations. That has been the experience of the Sates.

Alone, the line-item veto process is not going to be enough to balance the budget.

What we really need is to take up the balanced budget amendment to the Constitution once more, pass it, and send it to the Sates—send it to the people—for ratification.

I challenge President Clinton, who at least saw the light on the line-item veto, to support the balanced budget

amendment as well, and help pass it through the Senate so we can attack the cancerous Federal debt on a larger scale.

Second, the line-item veto will improve legislative accountability and produce a more thoughtful legislative process.

Starting when this act takes effect, Congress will be forced to reconsider questionable spending items and targeted tax breaks—items that Congress would never pass in the first place if those items were considered on their own merits—items that just do not stand up under any amount of public scrutiny.

It would cast an additional dose of sunlight on the legislative process.

We are all familiar with the rush to get the legislative trains out on time.

That means bills and reports spanning hundreds of pages that virtually no one is able to read—much less digest—in the day or two that they are before the body.

Moreover, any more it seems that virtually every appropriations bill—even the 13 regular bills—and virtually every tax bill, is a huge bill.

Knowing that any individual provision may have to return to Congress one more time to stand on its own merits will promote more responsible legislation in the first place.

In short, embarrassing items will not be sneaked into these bills in the first place.

Third, a line-item veto would improved executive accountability.

There is always some concern that the line-item veto would transfer too much power from the Congress to the President.

First, I suggest that is not such a bad thing. The Framers of the Constitution never envisioned 1,500-page, omnibus bills presented to the President on a take-it-or-leave-it basis.

This is not a swipe at the constitutional system of checks and balances—it is a correction. The system is broken. This is one of the first steps in fixing it.

The supposed blackmail that Presidents will exert over Congress as a result of the line-item veto, is nothing, compared what kind Congress has exerted for years on the President.

A President will rarely, if ever, risk closing down an entire department in a mere attempt to take out a handful of earmarked, local benefits.

But let me also differ a little with the presumption that a radical shift of power would take place.

Many of us on both sides of the aisle have suggested, at different times, that Presidents are not always serious about the rescissions messages they send to Congress.

And, sometimes, the volume of rescissions they propose do not live up to tough talk about what they would do if they had the line-item veto.

It is time to call the President's bluff—and I mean every President, because this is a bipartisan issue.

For years now, we have seen groups like Citizens Against Government Waste and others come up with billions of dollars in long lists of pork items.

Once the President starts using the line-item veto authority, he or she will have to answer to the people if the use of that authority doesn't match the Presidential rhetoric.

Congress would not lose the power of the purse—but the President will soon be expected to use the power of the spotlight of heightened public scrutiny.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER (Ms. SNOWE). The majority leader.

Mr. DOLE. Madam President, I ask unanimous consent that a vote on the adoption of the conference report accompanying S. 4, the line-item veto bill, occur at 7 p.m. this evening, with the time between now and the vote to be equally divided between Senators MCCAIN and BYRD.

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

Mr. JOHNSTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. Madam President, I rise in support of the position of the Senator from West Virginia, Mr. BYRD, on the line-item veto.

The PRESIDING OFFICER. Who yields the Senator time?

Mr. BYRD. How much time do I have under my control, I ask the Chair?

The PRESIDING OFFICER. The Senator has 25 minutes.

Mr. BYRD. Twenty-five minutes. I yield 5 minutes to the distinguished Senator from Louisiana.

Mr. JOHNSTON. I thank the Senator.

Madam President, this matter is not about balancing the budget, it is not even about the size of the deficit. This matter is about the relative power of the Chief Executive of the United States and the Congress of the United States. Why this Congress, this Senate, would want to give up its constitutional powers, which, by the way, I do not believe under the Constitution they have the right to do even if they wish to do that foolish thing, but why we would want to do that, I do not know.

I am particularly surprised, Madam President, that some of my colleagues on the other side of the aisle who fought so hard, for example, for star wars, why they would want to give to the President the right to veto star wars. I happen to have been an opponent through the years of star wars, at least at the levels of expenditure—$33 billion has been spent on star wars so far. I think that is a tremendous waste.

But, Madam President, I defend the right of this body and of this Congress to set those priorities. Why you would want to give it to the President to be able to change a bill already signed into law and just nit-pick that bill without taking out the whole bill, I do not know, Madam President.

Yesterday, there was an article in one of the Louisiana papers in which it said, ''Louisiana delegation gets piece of pork.'' They went on to describe an appropriation that Congressman LIVINGSTON and I had gotten in the New Orleans area because we had a flood down there of biblical proportions, over 20 inches of rain in a 24-hour period, seven people killed, $1 billion in damage. We were able to respond to that issue.

They went on to define ''pork'' as that which was not in the President's budget. If the Congress exercised its power under the Constitution, the power of the purse, then that was pork, according to this article and according to the National Taxpayers Union. But had it been in the President's budget, it would have been perfectly all right.

The idiocy of that kind of formulation, Madam President, is to me, absolutely incredible. Coming from a newspaper article, it is not unexpected because that is the kind of thing that people like to read. But coming on to the floor of the Senate and Senators saying it is the White House that knows best, it is—and we are not talking about the President; we are talking about the nameless, faceless gnomes in the White House who would be setting priorities, making policies, making the decisions about our constituents.

Our constituents would be coming to us, as in the case of this 20-inch flood. You bet I was down there after the flood, as were my colleagues, going through the homes, looking at the devastation, trying to sympathize with the people, they demanding in turn that we do something about this terrible tragedy. Our colleagues are saying, ''Look, if it's not in the President's budget, it should not be part of the bill. It is up to the White House to set those priorities.''

Madam President, there was nobody from the White House down in Louisiana to see that flood. They could not be. The Office of Management and Budget does not have that kind of travel budget. They did not go down and look at the individual problems of individual States. That is the job for elected representatives. That is what the redactors of our Constitution had in mind. That is why they put the power of the purse in the Congress.

We are closest to the people, and we respond to them. To leave all of that power in, as I say, not the President—maybe the President would decide on star wars or some big item like that, but the accumulation of items in that budget would be decided by OMB. And what would be the policy of OMB? They would have to have broad policies, such as to say, if it is not in the President's budget, we are going to veto it. We are going to treat everybody alike.

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. JOHNSTON. One additional minute.

Mr. BYRD. I yield 1 additional minute.

Mr. JOHNSTON. Madam President, the shift in power which this would

bring out would be absolutely mind-boggling to me. You know, the whole fight would be, ''Can you get in the President's budget or not?'' It would make total supplicants of all Members of Congress. You might like that if you like the President. I think this President is going to be reelected. I like him. I must say I do not like him enough to turn over to him, and to all of his successors, the power of the purse when it is vested by the Constitution in this Congress.

Madam President, my colleague, Senator BYRD, and others, made a powerful statement about the unconstitutionality of this provision earlier today. They surely are right. If we do not stand up for the rights of the Congress under the Constitution, I hope the courts will. I will support the Senator from West Virginia.

Mr. BYRD. Madam President, I thank the distinguished Senator. I yield the remainder of my time to Senator SARBANES.

Mr. SARBANES. Ten minutes?

Mr. BYRD. Ten minutes.

The PRESIDING OFFICER. The Senator from Maryland is recognized for 10 minutes.

Mr. BUMPERS. Would the Senator from West Virginia give me 1 minute prior to the Senator from Maryland speaking and it not come off the Senator's time?

Mr. BYRD. I yield 10 minutes to Senator SARBANES, but first 1 minute to Senator BUMPERS.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

Mr. BUMPERS. I thank the Senator from Louisiana for a very powerful, cogent statement. No. 2, I want to say to my colleagues that, if by some chance the Supreme Court does not rule this unconstitutional, you will never be able to take this power back. Thirty-four Senators can keep you from ever taking this power back. It will be gone forever.

When the Framers assembled in Pennsylvania, in Philadelphia, in 1787, the one thing they knew above everything else was they had had all the kings they wanted. They wanted no more kings. And they succeeded admirably. We have had 43 Presidents and no kings—until now. We are doing our very best to transfer kingly powers to the President of the United States. I thank the Senator for yielding.

Mr. SARBANES addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Madam President, I want to express my very deep appreciation to the distinguished Senator from West Virginia, Senator BYRD, for the extraordinary statement which he made earlier today on this issue. It is my prediction that, if this measure passes and is implemented, history will look back on this moment and say that was a critical turning point in our constitutional system and that it was the Senator from West Virginia, above all others, who stood on the floor and warned of what this would bring about; that it was the Senator from West Virginia who understood our existing constitutional system the best and saw the dangers inherent in this proposal.

Part of what is happening here is that we are engaged in symbolism, not the reality of addressing important national problems. There is a skilled craftsmanship in addressing problems of public policy which members of a legislative body are supposed to bring to the task. Anyone can get up and holler about problems. The question is, can you formulate an appropriate response?

As the distinguished Senator from Louisiana said, this proposal is not really about balancing the budget. You balance the budget by tough-minded decisions on the budget, which the President and the Congress have been making in recent years.

What is happening here is an enormous transfer of authority from the legislative branch to the executive branch that completely contravenes and contradicts the Constitution, so much so that I believe when tested in the courts, this measure will be found wanting. I fervently hope that will prove to be the case. This proposal gives the President the power, or purports to give the President the power, once he signs a piece of legislation into law, to then take out of that law various items—actually, as many as he chooses to pick—by what is called rescinding appropriation items—that unmaking of existing law. The Congress then, in order to override that rescission, would have to pass a disapproval bill which the President can veto. Once he vetoes the disapproval bill it takes a two-thirds majority in both Houses to override the President's rescission.

Thus, under the proposal before us, the President, as long as he can hold on to one-third plus one of either the Senate or the House—not both bodies; either the Senate or the House—can determine every spending priority of this country. Think of that. The President and 34 Senators, or the President and 146 Members of the House—not ''and,'' but ''or''—can determine every spending priority of this Nation. Obviously this represents a fundamental reordering of the separation of powers and the check and balance arrangements between the legislative and the executive branch in our Nation's Constitution.

Unfortunately, there is a tendency to dismiss such broad-reaching constitutional questions. They were, however, very much at the forefront of the thinking of the Founding Fathers when they devised the Constitution in Philadelphia in the summer of 1787; a Constitution that I might observe has served the Republic well for more than 2 centuries. As the able Senator from West Virginia has observed a very carefully balanced arrangement was put into place and it has served this Nation well. Obviously, when we consider changing our Nation's basic charter we need to be very careful and very prudent.

Now, I submit it does not take great skill or vision to have a strong executive. Lots of nations have strong executives. In fact, if a country's executive is too strong, we call it a dictatorship. If we review history, even look around the world now, we can see clear examples of this. It is one of the hallmarks of a free society to have a legislative branch with decisionmaking authority which can operate as a check and balance upon the executive. Another hallmark is to have an independent judicial branch which can also operate as a check and balance in the system. It should be noted that we have received a letter from the Judicial Conference of the United States expressing their very deep concern about this measure and indicating that they feel it undermines the independence of the judicial branch of our Government.

That letter states in part:

> The Judiciary believes there may be constitutional implications if the President is given independent authority to make line-item vetoes of its appropriations acts. The doctrine of separation of powers recognizes the vital importance of protecting the Judiciary against interference from any President.

The Senator from West Virginia, to his enormous credit, is a great institutionalist. He believes in the institutions of our Nation and is concerned with maintaining their strength and vitality and resists the political fad of the moment. Our founders established a balanced Government with independent branches, not only an executive with power and authority, but a legislative branch with power and authority, and a judiciary that is independent. This measure significantly erodes the arrangement which has served the Republic well for over 200 years.

I invite all of my colleagues to stop and think for a moment about how this proposal opens up the opportunity for the executive branch, for the President, to bring enormous pressure to bear upon the Members of the Congress and therefore markedly affect the dynamics between the two branches.

The President could link—easily link, obviously will link, in my judgment—unrelated matters to a specific item in the appropriations bill. Suppose a Member is opposing the President's policy—perhaps somewhere around the world or on some domestic policy; perhaps a nomination which the President had made—and the President receives a bill which contains in it an item of extreme importance to the Member's district or State, justified under any criteria as serving the Nation's economic interest; for example, the dredging of a harbor, or the building of a road. The President calls the number and says he noticed this item, he certainly hopes he does not have to rescind it. He does not want to do so. He knows it is meritorious. But at the same time, he has this other issue that he is very concerned about in which the Member is opposing him.

My friend from Louisiana spoke of how the line-item veto power would be used to directly neutralize congressional policy on a particular issue. A majority is in favor of a certain policy, the President pulls it out and negates it, holds on to one-third of one House, and that is the end of it—even though a clear majority in both Houses of the Congress wanted the policy.

The next step beyond rendering the congressional opinion null and void on a specific issue itself, is to link that issue to some other unrelated issue on which the President is seeking to obtain leverage over the Member of Congress. In fact, in the hands of a vindictive President, the line-item veto could be absolutely brutal. I want to lay that on the record today. In the hands of a vindictive President the line-item veto could be absolutely brutal. But you would not need a vindictive President for abuses. Presidents anxious to gain their way, as all Presidents are, will use this weapon to pressure legislators.

Mr. JOHNSTON. Will the Senator yield?

Mr. SARBANES. I am happy to yield to the Senator.

The PRESIDING OFFICER. The time of the Senator is expired.

Mr. BYRD. Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator has 7 minutes.

Mr. BYRD. I yield 2 additional minutes to Senator SARBANES.

Mr. SARBANES. I yield to the Senator from Louisiana.

Mr. JOHNSTON. Madam President, I wonder if the Senator finds this parallel: In a conference report, when the Senate and the House go to a conference committee, there are bargains struck, and finally a bill put together. Would it not be somewhat like being able to strike a bargain, putting the bill together, signing off on it, and then after the bill is signed, have one House strike all the items that the other House wanted?

Mr. SARBANES. You could absolutely redo the legislation.

I ask unanimous consent to have printed at the end of my remarks an article written by Judge Abner Mikva on this very point, called ''Loosening the Glue of Democracy.''

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

(See exhibit 1.)

Mr. SARBANES. Madam President, the Senator from West Virginia made a constructive proposal, which was just tabled, which would have allowed the President to propose rescissions to the Congress for consideration on an expedited basis, with the Congress having to vote on the rescission and with a majority vote required to approve the rescission. This would have enabled the President to spotlight those items of which he disapproved and required a congressional vote on them but would not have altered our basic constitutional arrangements.

The line-item veto tool contained in this legislation will not, in my judgment, become a way to delete appropriation items, but rather a tool and a legislative strategy used by the White House and executive branch to pressure Members on their positions on unrelated items. It will become a heavy, coercive weapon of pressure.

This is a dangerous departure from past constitutional practice, drastically shifting the balance between the executive and legislative branches. It will fundamentally alter our constitutional arrangement to the detriment of a system of government which has served well our Republic and been the marvel of the world.

Madam President, I close by again expressing my deep gratitude to the Senator from West Virginia for so clearly and eloquently setting forth the severe problems connected with this proposal.

EXHIBIT 1

[From the Legal Times, Mar. 25, 1996]

LOOSENING THE GLUE OF DEMOCRACY

THE LINE-ITEM VETO WOULD DISCOURAGE CONGRESSIONAL COMPROMISE

(By Abner J. Mikva)

There is a certain hardiness to the idea of a line-item veto that causes it to keep coming back: Presidents, of course, have always wanted it because the line-item veto represents a substantial transfer of power from the legislative branch to the executive branch. Government purists favor the idea because the current appropriations process—whereby all kinds of disparate expenditures are wrapped or ''bundled'' into one bill so that the president must either swallow the whole thing or veto the whole thing—is very messy and wasteful. Reformer generally urge such a change because anything that curtails the power of Congress to spend has to be good.

My bias against the unbundling of appropriations and other legislative proposals has changed over the years. When I first saw the appropriations process, back in the Illinois legislature, it seemed the height of irresponsibility to bundle dozens of purposes into a single bill. It also seemed unconstitutional since the Illinois Constitution had a ''single purpose'' clause, under which bills considered by the legislature were to contain only one subject matter. But the ''single purpose'' clause had been observed in the breach for many years by the time I was elected in 1956.

I first saw the bundling process work when a single bill, presented for final passage, appropriated money for both the Fair Employment Practices Commission and a host of other commissions, including one to provide services for Spanish-American War veterans (there were two left in the state at the time) and one to study the size of mosquitoes that inhabited the downstate portions of Illinois. If I wanted to vote for the FEPC, I had to swallow all those other commissions, which I thought were wasteful. So I invoked the constitutional clause. To my dismay, the legislature favored all the other commissions on separate votes, but the FEPC went down to defeat. That is how I learned that there are some pluses to the bundling process.

Bundling is very asymmetrical in effect and probably wasteful. But it is also a legislative device that allows various coalitions to form and thus moves the legislative process forward.

Consider South America, where regional rivalries and resentments in many countries make governing very difficult. The inability to form the political coalitions that are normal in this country creates enormous pressure on the central government. This pressure is certainly one of the causes of the mini-revolts that perpetually arise. The have-nots feel excluded from the process, while the majority (or the military regime) exercise their power without taking care of the depressed areas of the country.

It is more difficult to ignore the have-nots in the United States. First of all, members of Congress are elected as representatives of geographic areas, rather than as representatives of parties. Woe betide the congressman who starts thinking too much like a national legislator and forgets the parochial interests of his constituents.

Second, the separate elections of the president and Congress creates the necessity for the two branches to cooperate in setting spending priorities. Floating coalitions that take into account the needs of all the sections and groups in the country become essential. When urban interests wanted to promote a food program for the cities, for example, they formed a coalition with agricultural interests, and food stamps were joined with farm subsidies.

It is true that bundling encourages the merger of bad ideas with good ideas, and diminishes the ability of the president to undo the package. A line-item veto, which would allow the president to veto any single piece of an appropriations bill (or, under some proposals, reject disparate pieces of any other bill), makes the whole process more rational. But it also makes it harder to find the glue that holds the disparate parts of our country together. City people usually don't care about dams and farm policy. Their rural cousins don't think much about mass transportation or urban renewal or housing policy. If the two groups of representatives don't have anything to bargain about, it is unlikely that either set of concerns will receive appropriate attention.

The other downside to the line-item veto is exactly the reason why almost all presidents want the change and why, up to now, most Congresses have resisted the idea. The line-item veto transfers an enormous amount of power from Congress to the president. For those of us who think that the executive branch is strong enough, and that an imperial presidency is more of a threat than an overpowering Congress, the current balance of power is just right.

That has been the gist of Sen. Robert Byrd's opposition to the line-item veto. The West Virginia Democrat has argued that the appropriations power, the power of the purse, is the only real power that Congress has and that the line-item veto would diminish that power substantially. So far, he has prevailed—although last year, the reason he prevailed had more to do with the Republicans' unwillingness to give such a powerful tool to President Bill Clinton.

But now the political dynamics have changed. The Republicans in Congress can fashion a line-item veto that will not benefit the incumbent president—unless he gets reelected—and their probable presidential candidate, Senate Majority Leader Robert Dole, has recently made clear that he wants this passed. Chances for the line-item veto are vastly greater.

There are some constitutional problems in creating such a procedure. The wording of the Constitution suggests pretty strongly that a bill is presented to the president for his signature or veto in its entirety. It will take some creative legislating to overcome such a ''technicality.'' I reluctantly advised the president last year that it was possible to draft a line-item veto law that would pass constitutional muster. The draft proposal involved a Rube Goldberg plan that ''pretended'' that the omnibus appropriations

legislation passed by Congress and presented to the president actually consists of separate bills for various purposes. This pretense was effectuated by putting language in legislation to that effect.

President Clinton was not then asking for my policy views, and I did not have to reconcile my advice with my policy bias toward the first branch of government—Congress. But I was uneasy enough to become more sympathetic to the late Justice Robert Jackson's handling of a similar dilemma in one of his Supreme Court opinions. He acknowledged his apostasy concerning an issue on which he had opined to the contrary during his tenure as attorney general. Quoting another, Justice Jackson wrote, ''The matter does not appear to me now as it appears to have appeared to me then.''

My apostasy was less public. My memo to the president was only an internal document, and I didn't have to tell him how I felt about the line-item veto. But now that I have no representational responsibilities, I prefer to stand with Sen. Byrd.

Mr. BYRD. Madam President, I thank the Senator for his excellent remarks.

Mr. DOLE. Madam President, I am going to yield 3 minutes of my leader time to the distinguished Senator from Nebraska. First, I will take 30 seconds and then put my statement in the RECORD. I have a meeting in the office.

I have been listening to some of the debate. I know the distinguished Senator from West Virginia certainly understands this issue better than any of us. But we sometimes disagree. The one thing we should not do is elect a vindictive President. I do not think the present occupant is or the one challenging the President is. So we will be safe for the next 4 years, I tell the Senator from Maryland, and probably 8.

I understand what someone could do to abuse the power of the Office of the President. But we have been negotiating all afternoon in my office. We have five appropriation bills, and we have been trying to figure out how we can come together on those, taking a little out here and adding a little here. It is very, very complicated these days. We are working with the White House.

I think many of the fears and concerns expressed would be if you had somebody in the White House who stiffed Congress on everything and refused to negotiate. Right now, in my office we are negotiating with the Chief of Staff, Mr. Panetta, and trying to come together on a big, big appropriation bill so that we can pass it on Friday. We may not get it done because they have their priorities, and Congress has its priorities. But I believe the line-item veto is an idea whose time has come.

I certainly thank all those involved, particularly the Senator from Arizona, Senator MCCAIN, and the Senator from Indiana, Senator COATS, with the great assistance of the Senator from New Mexico, Senator DOMENICI, and the Senator from Alaska, Mr. STEVENS.

This is not a partisan measure. President Clinton supports the line-item veto. I think it has support on each side of the aisle. I know the Senator from West Virginia wants to leave here by 7 o'clock.

Madam President, again I am proud that today the Senate is passing the conference report on the Line-Item Veto Act of 1996. Giving line-item veto authority to the President is a promise we made to the American people in the Contract With America, and it is a promise we are following through on today.

Line-item veto seems to be the one thing that all modern Presidents agree on. All of our recent Presidents have called for the line-item veto—both Democrat and Republican Presidents alike. And for good reason. The President, regardless of party, should be able to eliminate unnecessary pork-barrel projects from large appropriations bills.

Most of our Nation's Governors have the line-item veto. Some States have had line-item veto since the Civil War. There's a lot of experience out there in the States that shows us this is a good idea; 43 Governors have the line-item veto, and now—finally—the President will, too.

President Clinton and I have talked about the Line-Item Veto Act. He wants the line-item veto and we both think it is a good idea.

Certainly, line-item veto is not a cure-all for budget deficits. No one is pretending it is the one big answer to all of our budget problems.

But it is one additional tool a President can use to help keep unnecessary spending down. It's one way for us to fulfill our pledge to American taxpayers for less Washington spending.

Line-item veto has a lot of support in the Senate. We passed our version of the bill in the Senate just about a year ago on March 17, 1995 with the support of 69 Senators.

But I know some are worried that it shifts the balance of power away from Congress and to the President. Well, appropriations bills that go on for hundreds of pages have already altered the dynamic between the President and Congress from what it was 200 years ago.

Even so, for those who aren't so sure line-item veto is the right approach, this bill has a sunset in it. We will try this experiment for a few years and see if it works. I am confident it will. It is an idea whose time has come.

Mr. President, I want to thank Senators STEVENS, DOMENICI, MCCAIN, and COATS for their work on this bill. It is thanks to them that we are about to pass this important and historic legislation.

Madam President, I yield 3 minutes of my leader time to the Senator from Nebraska.

Mr. EXON. Madam President, my colleagues know that I am an ardent supporter of a line-item veto. I had one when I was Governor of Nebraska and put it to excellent use. It was crucial to my success in balancing the budget.

I am an original cosponsor of line-item veto legislation. I am proud of the leadership role I have taken. I fervently believe that the President of the United States should have at his disposal every possible means to strip away the pork from the Federal budget. The line-item veto should figure prominently in his arsenal.

Mr. President, I will vote for this conference report, but I will not conceal my keen disappointment at what has emerged after nearly a year of stalling, partisan games, and bickering. This is a classic case of what might have been. I was a conferee but as usual, the minority was shut out of the decisionmaking process. I also have some possible constitutional questions and concerns.

Anyone who doubts the partisanship behind this legislation need look no further than its effective date—January 1, 1997. I have supported the line-item veto under Republican Presidents and Democratic Presidents. Those of us who have long sought the line-item veto believe it is a good idea, regardless who sits in the White House.

So, we are in a big hurry to pass this legislation because it is a popular issue in an election year. But, there is no rush to make it effective. How strange. That can wait until after the Republican Congress has passed one last set of appropriation bills and perhaps, for good measure, one last bill loaded with special interest tax breaks.

I had great expectations for this legislation; so did many of my colleagues on both sides. What we got was diminished returns. It now seems that those of us who fought the good fight will reluctantly have to accept an inferior product. We desperately need this line-item veto—as flawed as it may be.

Even the staunchest advocate of a line-item veto must confess that the Senate bill did not age well in conference. We do not have a better bill today. The line-item veto before the Senate today is a half-measure. It only addresses one side of wasteful Government spending.

Madam President, there are different types of pork around here. There is what I call classic pork, but it does not belong in a museum. It is the sweetheart awards, the bogus studies, the phony commissions, the make-work projects that look good to the constituents back home.

Frittering away the taxpayers' dollars is an affront to middle-income Americans who have been stretched and squeezed enough. This is where the line-item veto can be a fierce instrument against waste. The President can slice out the pork with a slash of his pen. In this regard, the measure before the Senate should accomplish today what we set out to do, and I salute the managers of the conference.

But the special interests who benefit from pork always seem to be one-step ahead of the deficit cutters. You might not find their pork on the menu of an appropriations bill. But they are still dining a la carte at the Finance or Ways and Means Committees, and yes, the Budget Committee too.

They dress up pork in the latest fashion: special interest tax breaks or tax

expenditures. That is right, Mr. President. It is still pork, but it will be riveted onto a revenue bill or a budget reconciliation bill—like the one the Republican majority passed last fall. Call it a tax loophole or whatever you want, it is still just as wasteful, and it is still just as shameful as appropriated pork spending.

This problem of tax expenditures is not new. We have visited it many times, but with little resolution. The Budget Committee held hearings going back to 1993 on the budgetary effects of tax expenditures. OMB Director Dr. Alice Rivlin testified, and I quote, ''Tax expenditures add to the Federal deficit in the same way that direct spending programs do.''

I believe, and many of my colleagues on both sides agree, that if we are serious about cutting wasteful spending, if we are serious about reducing the deficit, if we are serious about a credible line-item veto, we should include special interest tax loopholes in the list of what the President can line out.

What should shine forth from this conference report is an attack on both wasteful appropriated spending and tax benefit pork. But the long arm of the special interests reached into the conference and turned off the lights when tax loopholes were put on the table.

From what I have seen of the conference report language, it could be virtually impossible for the President to veto special interest tax breaks, or as they are now called, limited tax benefits. There are so many exceptions that any tax lobbyist worth his salt will be able to write legislation in such a way that they will not be subject to the line-item veto procedure. And mark my words, they will.

The conference report language defines a tax benefit as a revenue-losing provision that does one or two things. It could provide a Federal tax deduction, credit, exclusion, or preference to 100 or fewer beneficiaries. What is more, there are exclusions for tax breaks that target persons in the same industry, engaged in the same type of activity, owning the same type of property, or issuing the same type of investment.

The exclusions do not end here; quite the contrary, they are expanded. There are exceptions for individuals with different incomes, marital status, number of dependents, or tax return filing status. For businesses and trade associations the exclusion could be based on size or form.

That is so limited, it does not exist. It is nearly impossible to think of any provision that it would cover. In fact, I do not believe that more than one or two of the more than dozens of tax provisions in the last year's Republican budget reconciliation would be subject to a Presidential line-item veto under the report language. And that bill was drafted before the lobbyists needed to draft their way around the line-item veto.

The exceptions are troubling enough, but it gets worse. Who defines a targeted tax benefit for the purposes of the line-item veto? I was surprised to learn that it will be the Joint Committee on Taxation. I, certainly, do not intend to disparage the committee and its fine members, but this oversight duty strikes this Senator like the proverbial fox guarding the henhouse. This conference report would make Aesop proud.

This is how it works. Under the provisions of the conference report, Joint Committee on Taxation will review every tax bill and decide whether the bill includes any tax loopholes, called limited tax benefits. The Joint Committee then gives its ruling to the conference committee, which gets to choose whether to include that information in its conference report. Recall that it is very often the staff of this same Joint Committee on Taxation that drafts the tax loopholes in the first place.

Here is the kicker. If the JCT statement is included, the President can rescind only, and I repeat, only those items identified in the legislation as limited tax benefits. The JCT declaration is more than a piece of paper. It is a declaration of immunity for what could very well be a limited tax benefit. It is an inoculation against a Presidential line-item veto. It is the magic bullet for tax lobbyists.

I do not believe that any of my colleagues fell off the turnip truck yesterday. We know how lobbyists work. I guarantee you that they will be swarming over JCT like the sand hill cranes returning to the Platte River in Nebraska. JCT will be thick as thieves with tax lobbyists. And for good reason, the committee will have the sweeping power to grant unprecedented immunity to any Tom, Dick, or Harry with a sweetheart tax deal.

Madam President, I am disappointed by the final product the conferees bring to the floor today. It is a tarnished reflection of the hopes I brought to the process. Yes; we should have done better. Yes; we should have attacked pork in all of its guises, Yes; we should have been tougher. But I have my doubts that more time and more debate will produce a different result—a superior result. I tell my colleagues that giving the President at least some power to rein in wasteful spending is better than doing nothing. So today, I will cast my vote for taking a small, but clear, step in the right direction. I urge my colleagues to do the same.

I yield my remaining time.

Mr. MCCAIN. Madam President, I yield 3 minutes to the Senator from South Carolina, Senator THURMOND.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Madam President, I rise in support of the conference report accompanying S. 4, the Line-Item Veto Act. For many years, I have been a supporter of giving authority to the President to disapprove specific items of appropriation presented to him. On the first legislative day of this Congress, I introduced Senate Joint Resolution 2, proposing a constitutional amendment to give the President line-item veto authority.

Presidential authority for a line-item veto is a significant fiscal tool which would provide a valuable means to reduce and restrain excessive appropriations. This proposal will give the President the opportunity to approve or disapprove individual items of appropriation which have passed the Congress. It does not grant power to simply reduce the dollar amount legislated by the Congress.

Madam President, 43 Governors currently have constitutional authority to reduce or eliminate items or provisions in appropriation measures. My home State of South Carolina provides this authority, and I found it most useful during my service as Governor. Surely the President should have authority that 43 Governors now have to check unbridled spending.

It is widely recognized that Federal spending is out of control. The Federal budget has been balanced only once in the last 35 years. Over the past 20 years, Federal receipts, in current dollars, have grown from $279 billion to more than $1.3 trillion. In the meantime, Federal outlays have grown from $332 billion in 1975, to more than $1.5 trillion last year, an increase of greater than $1.1 trillion. Annual budget deficits have reached $200 billion, with the national debt growing to more than $5 trillion.

Madam President, it is clear that neither the President nor the Congress are effectively dealing with the budget crisis. The President continues to submit budgets which contain little spending reform and continue to project annual deficits.

If we are to have sustained economic growth, Government spending must be significantly reduced. A balanced budget amendment, which I am hopeful will still be passed this Congress, and line-item veto authority would do much to bring about fiscal responsibility.

Madam President, it would be a mistake to fail to pass this measure. It is my hope that this Congress will now approve the line-item veto and send a clear message to the American people that we are making a serious effort to get our Nation's fiscal house in order.

Madam President, I congratulate the conferees for their work on this bill. This conference report provides the President with a very narrow authority to cancel specific appropriations, direct spending, or limited tax benefits. Under this provision, the Congress retains its legislative power of the purse in that the Congress may enact a bill disapproving the President's previous cancellation. This bill, of course, would be subject to a Presidential veto and subsequent congressional override.

Madam President, the conference report also requires that any canceled budget authority, direct spending, or tax benefit be applied to deficit reduction. Canceled funds would not be available to offset additional spending.

Madam President, the line-item veto will introduce a new level of discipline in the Federal budget process. It will bring an additional level of scrutiny to items of Federal spending. The line-item veto, combined with a balanced budget amendment, true reforms in entitlement spending, and restraint in Federal appropriations, will put us back on the track of fiscal responsibility.

The PRESIDING OFFICER. Who yields time?

Mr. BYRD. I yield to the Senator from Michigan, Senator LEVIN.

Mr. LEVIN. Madam President, I thank the Senator from West Virginia. Again, I congratulate him for the extraordinary effort he has made to try to make us pay attention to the underlying issues here. The bill before us says that, notwithstanding certain provisions, bills which have been signed into law can be canceled by the President.

Never in the history of this body has the Congress attempted to give to the President the power on his own to cancel the law of the United States. The process is the President signs the appropriations bills. It is then the law of the land. Those words should have a certain majesty in this body. This appropriations bill now signed by the President is the law. But under the approach before us, the President would then have 5 days in which he can cancel a part or all of that law without congressional involvement. Yes, the Congress could vote to override the cancellation, but if the Congress does not, the cancellation action of the President canceling the law of the land stands.

Never in the history of Congress has there been an effort to hand to a President that kind of power. We are told the President of the United States supports this. Of course he does. Every President would love Congress to hand part of its power to the President. Every President would love a piece of the power of the purse. But the Constitution will not let us do it, and we should not try.

Mr. SARBANES. Will the Senator yield?

Mr. LEVIN. I am happy to yield.

Mr. SARBANES. In fact, the Constitution says:

> Every Bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a Law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his Objections . . . .

I do not see how constitutionally a President can sign a bill, make it the law, and then undo the law through a procedure that would not have been permitted by the Constitution.

Mr. LEVIN. The Supreme Court has said it precisely in the Chadha case. I am going to read these words again. I read them earlier this afternoon.

> Amendment and repeal of statutes no less than enactment must conform with article I.

The Supreme Court has told us what the Constitution tells us, as the Senator from Maryland just read:

> Amendment and repeal of statutes no less than enactment must conform with article I.

This conference report comes up with a new procedure which does not conform with article I and says that the President may cancel—that means repeal, void—the law of the land of the United States of America. He can with his pen on day 1 create a law by signing our bill, and on day 2, 3, 4, 5, or 6 cancel what is then already the law of the land.

Madam President, the Constitution will not tolerate that. We should not even attempt to do such a thing. There have been many reasons given for why the line-item veto in one version or another would be useful in terms of deficit reduction. There are ways constitutionally of doing it. The Senator from West Virginia made that effort earlier this afternoon. The current conference report before us simply cannot stand muster.

Again, I thank my friend.

Mr. MCCAIN. Madam President, how much time remains?

The PRESIDING OFFICER. There are 22 minutes remaining.

Mr. MCCAIN. I yield 11 minutes to the Senator from Indiana.

The PRESIDING OFFICER. The Senator from Indiana is recognized.

Mr. COATS. Madam President, I thank my colleague for yielding. I appreciate the debate that we have had. It has been a long and difficult and sometimes tortuous road to this particular point.

It was in the early or late 1800's that the first attempt to provide the line-item veto power to the executive branch was offered in the Congress. There have been 200 attempts subsequent to that. So it has been a long effort.

The question was raised: Why would Congress cede its independence? Why would Congress cede its power of spending to the executive branch?—because it is an extraordinary effort; it is a historic effort. But I would say that the reason this is happening and the reason this will pass very shortly with a pretty substantial bipartisan vote is that there has been an extraordinary abuse of the power of spending. Despite every legislative effort and every promise and pledge on this floor, the egregious practice of blackmailing the President by attaching to otherwise necessary spending bills pork barrel projects, projects spending that does not have any relevance to the particular bill and would never probably stand the light of day in debate on that particular issue or receive a majority vote has been passed into law.

I would just say in response to the Senator from Michigan that we have had constitutional lawyers pour over this legislation for years and years. The Chadha decision does not apply to what we have done here. Constitutional lawyers from each end of the spectrum and in between have told us that the legislation that we are presenting is constitutional.

I would like to take this opportunity to thank some people for their extraordinary work on this. I acknowledge Senator BYRD's articulate and worthy opposition to this message throughout the years that we have been debating line-item veto. I want to thank Senator DOMENICI and Senator STEVENS for helping us at a critical time. They were key to a strong, workable compromise on the issue. Senator DOLE's leadership, his decision to make this happen, to break the impasse and achieve a compromise, was absolutely critical to our success. Particularly, it is a privilege for me to thank my friend and colleague, JOHN MCCAIN from Arizona, for his efforts in this regard. I deeply respect his determination. He has been tireless in his fight against the current system and the status quo. He has persevered in long odds, in the face of what often looked like a losing battle. We joined together 8 years ago in a commitment to pass a line-item veto, and it has been my privilege to partner with him in this effort.

Madam President, this measure, in my opinion, is the most important Government reform that this Congress for many Congresses has addressed. Yes, a line-item veto will help reduce the deficit. Yes, a line-item veto will eliminate foolish waste. But our ultimate objective is different. Our current budget process is designed for deception. It requires the disinfectant of scrutiny and debate.

When we send spending to the President that cannot be justified on its merits, it is attached more often than not to important appropriations bills. This has tended, first, to tie the President's hands, leaving him with a take-it-or-leave-it decision on the entire bill.

Second, it is used as a means of obscuring spending in the shuffle of uncounted billions of dollars of appropriations.

When we hide our excess behind a shield of vital legislation, our aim is plain. We do it to mask our wasteful spending by confusing the American taxpayer. We have created a system that avoids public ridicule only because it consciously attempts to keep our citizens from knowing how their money is spent. This is not a rational process. This is a deception. It is a trick, and it must stop. It is more than abuse of public money; it is a betrayal of public trust.

But now we have an opportunity to end that abuse and restore that trust. We have a chance to pass legislative line-item veto in a form that has gained support from both parties and in both Houses of Congress. We have the power to make our goal of budget reform a reality. It is not all that we need to do, but it is a huge leap forward.

The line-item veto is designed to confront our deficit and to save taxpayers' money. We have shaped this legislation to accomplish that purpose through a lockbox, ensuring that all

the savings canceled by the President go forward toward deficit reduction.

The line-item veto is not a budgetary trick. Unlike the appropriations possess that currently exists and has existed from the beginning of this legislation, nothing is taken off budget. No pay dates are altered. It is a substantive change aimed at discouraging budget waste by encouraging the kind of openness and conflict that enforces restraint.

The goal is not to hand the Executive dominance in the budget process. The goal is the necessary nudge toward an equilibrium of budget influence strengthening vital checks on excess. But I think it does something more. I think the real benefit of the line-item veto is that it exposes a process that thrives on public deception. It is a lasting, meaningful reform—changing the very ground rules of the way this legislature has operated.

We have reached a historic decision, a historic moment. The first line-item veto, as I said, was introduced 120 years ago, interestingly enough, by a Congressman from West Virginia, Charles Faulkner. It died then in committee, and since then nearly 200 line-item veto bills have been introduced, each one buried in committee, blocked by procedures or killed by filibusters.

Today we have not been blocked. Today we have not been killed. And this issue will no longer be ignored or no longer be denied. The House and the Senate are in agreement. The President is in agreement. The public is in agreement. And now just one final vote remains.

This measure is a milestone of reform. It is the first time that the Congress will voluntarily part with a form of power it has abused. That is the result of a public that no longer accepts our excesses and excuses. But it is also evidence of a new era in Congress, proof of a sea change in American politics. This vote will prove that Congress can overcome its own narrow institutional interests to serve the interests of the Nation. That will be something remarkable, something of which every Member who supports this legislation can rightfully be proud.

With this vote, let us show the American people we are serious about changing the way this Congress works. Let us show them a legislative process conducted without deception and without the embarrassment we always feel when it is exposed. Let us show them that their tax money will no longer be wasted on favors for the few at the expense of the many. Let us show them that business as usual in Congress is finally and decisively over.

Madam President, I yield the floor. I yield back any additional time that was yielded to me.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Madam President, I yield myself the remaining time.

Madam President, a number of comments and statements have been made about this legislation, and due to a shortage of time I would not be able to respond to them. With the help of my friend and colleague from New Mexico, we will submit a long statement for the RECORD tomorrow in response to some of the comments and statements that were made about the impact of the line-item veto. I think it is important that the record be clear in response to some of those statements as I think in future years historians may be looking at the debate that took place in the Chamber today.

Madam President, we have nearly arrived at a moment I have sought for 10 years. In my life, I have had cause to develop a very keen appreciation for the value of time, and that appreciation has made it unlikely that I will soon enjoy a reputation for abiding patience. I confess my great eagerness for this day's arrival. The line-item veto's elusiveness has encouraged in me if not patience, then certainly respect for those who possess it in greater quantity than I.

Ten years may be but a moment in the life of this venerable institution, but it is a long time to me. In a few minutes, the issue will be decided. I am gratified beyond measure that the Senate is now apparently prepared to adopt S. 4, the line-item veto conference report, that its adoption by the other body is assured, and that the President of the United States will soon sign this bill into law.

I am deeply grateful to my colleagues who have worked so hard to give the President this authority. I wish to first thank my partner in this long, difficult fight, my dear friend, the Senator from Indiana, [Mr. COATS]. His dedication to this legislation has been extraordinary and its success would not have been possible absent the great care and patience he has exercised on its behalf.

I would like to thank Mark Buse on my staff and Sharon Soderstrom and Megan Gilly on Senator COATS' staff.

Madam President, I am grateful to the chairman of the Budget Committee, Senator DOMENICI, and the chairman of the Governmental Affairs Committee, Senator STEVENS. There have been moments in our conference when my gratitude may not have been evident, but I would not want this debate to conclude without assuring both these Senators of my respect for them and my appreciation for their sincere efforts to improve this legislation. We may have had a few differences on some questions pertaining to the line-item veto, but I know we are united in our commitment to the success of S. 4.

I also wish to thank the assistant majority leader, Senator LOTT. As he often does, amidst the confusion and controversies that often define conferences, he managed to identify the common ground and bring all parties to fair compromises and broad agreement.

Finally, let me say to the majority leader, Senator DOLE, all the proponents of the line-item veto know that without his skillful leadership, without his admonition to put differences over details aside for the sake of the principle of the line-item veto, we would not now stand at the threshold of accomplishing something of real value to this Nation. He is, as former baseball great Reggie Jackson once described himself, ''the straw that stirs the drink'' around this place.

The rules and customs of the Senate are not revered as inducements to action but, rather, for their restraining effect on ill-considered actions. Few things of real importance would ever occur here without Senator DOLE's leadership. The advocates of this legislation have cause to celebrate his leadership today, but I think even the opponents of this particular measure could refer to the many occasions when all Senators have had cause to celebrate Senator DOLE's leadership of the Senate.

Madam President, the support of my colleagues for the line-item veto have made this long, difficult contest worthwhile and an honor to have been involved in, but even greater honor is derived from the quality of the opposition to this legislation. And every Senator is aware that the quality of that opposition is directly proportional to the quality of one Senator in particular, the estimable Senator from West Virginia, Senator BYRD.

Madam President, I would like to indulge a moment of common weakness of politicians. I wish to quote myself. I wish to quote from remarks I made 1 year ago when we first passed the line-item veto. I said at that time that ''Senator BYRD distinguished our debate, as he has distinguished so many of our previous debates,'' as he has distinguished today's debate, ''with his passion and his eloquence, his wisdom and his deep abiding patriotism. Although my colleagues might believe I have eagerly sought opportunities to contend with Senator BYRD, that was, to use a sports colloquialism, only my game face. I assure you I have approached each encounter with trepidation. Senator BYRD is a very formidable man.''

Madam President, I stand by that tribute today. If there is a Member of this body who loves his country more, who reveres the Constitution more, or who defends the Congress more effectively, I have not had the honor of his or her acquaintance. Should we proponents of the line-item veto prevail, I will take little pride in overcoming Senator BYRD's impressive opposition but only renewed respect for the honor of this body as personified by its ablest defender, Senator ROBERT BYRD.

Senator BYRD has solemnly adjured the Senate to refrain from unwittingly violating the Constitution. As I said, his love for that noble document is profound and worthy of a devoted public servant. I, too, love the Constitution, although I cannot equal the Senator's ability to express that love.

Like Senator BYRD, my regard for the Constitution encompasses more than my appreciation for its genius and for the wisdom of its authors. It is for the ideas it protects, for the Nation born of those ideas that I would ransom my life to defend the Constitution of the United States.

It is to help preserve the notion that Government derived from the consent of the governed is as sound as it is just that I have advocated this small shift in authority from one branch of our Government to another. I do not think the change to be as precipitous as its opponents fear. Even with the line-item veto authority, the President could ill-afford to disregard the will of Congress. Should he abuse his authority, Congress could and would compel the redress of that abuse.

I contend that granting the President this authority is necessary given the gravity of our fiscal problems and the inadequacy of Congress' past efforts to remedy those problems. I do not believe that the line-item veto will empower the President to cure Government's insolvency on its own. Indeed, that burden is and it will always remain Congress' responsibility. The amounts of money that may be spared through the application of the line-item veto are significant but certainly not significant enough to remedy the Federal budget deficit.

But granting the President this authority is, I believe, a necessary first step toward improving certain of our own practices, improvements that must be made for serious redress of our fiscal problems. The Senator from West Virginia reveres, as do I, the custom of the Senate, but I am sure he would agree that all human institutions, just as all human beings, must fall short of perfection.

For some years now, the Congress has failed to exercise its power of the purse with as much care as we should have. Blame should not be unfairly apportioned to one side of the aisle or the other. All have shared in our failures. Nor has Congress' imperfections proved us to be inferior to other branches of Government. This is not what the proponents contend.

What we contend is that the President is less encumbered by the political pressures affecting the spending decisions of Members of Congress whose constituencies are more narrowly defined than his. Thus, the President could take a sterner view of public expenditures which serve the interests of only a few which cannot be reasonably argued as worth the expense given our current financial difficulties. In anticipation of a veto and the attendant public attention to the vetoed line-item appropriation, Members should prove more able to resist the attractions of unnecessary spending and thus begin the overdue reform of our spending practices. It is not an indictment of Congress nor any of its Members to note that this very human institution can stand a little reform now and then.

Madam President, I urge my colleagues to support the line-item veto conference report and show the American people that, for their sake, we are prepared to relinquish a little of our own power.

I am very pleased to be here on this incredibly historic occasion.

I yield the remainder of my time.

Mr. BYRD. Will the Senator yield?

Mr. MCCAIN. I am happy to yield.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Madam President, I think of an old fable about two frogs. They both fell into a churn that was half filled with milk. One of the frogs immediately turned over, gave up the fight, and perished. The other frog kept kicking until he churned a big patty of butter. He mounted the butter, jumped out of the churn, and saved his life.

The moral of the story is: Keep on kicking and you will churn the butter.

Madam President, I say this in order to congratulate Senator MCCAIN and Senator COATS especially, for their long fight and for their success in having gained the prize after striving for these many, many years. They never gave up. They never gave up hope. They always said, ''Well, we will be back next year.''

So I salute them in their victory and, as for myself, I simply say, as the Apostle Paul, ''I have fought a good fight, I have finished my course, I have kept the faith.''

I thank all Senators.

Mr. COATS. Will the Senator yield, if I could just respond to that?

First of all, that is a high compliment and I am sure I speak for both Senator MCCAIN and myself in thanking you for that.

But, second, I leave here, after this vote, with the vivid picture in my mind that the Senator from West Virginia is still kicking in the churn on this issue, and that the final chapter probably is not written yet.

I admire his tenacity also, and I think he has gained the respect of Senator MCCAIN and I and everyone else for his diligence in presenting his case.

Mr. BYRD. I thank the Senator.

Mr. MCCAIN. I yield my time.

The PRESIDING OFFICER. The question is on agreeing to the conference report on the line-item veto.

Mr. COATS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the conference report, the yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

The result was announced, yeas 69, nays 31, as follows:

[Rollcall Vote No. 56 Leg.]

YEAS—69

Abraham	Faircloth	Lugar
Ashcroft	Feingold	Mack
Baucus	Feinstein	McCain
Bennett	Frist	McConnell
Biden	Gorton	Murkowski
Bond	Graham	Nickles
Bradley	Gramm	Pressler
Breaux	Grams	Robb
Brown	Grassley	Roth
Burns	Gregg	Santorum
Campbell	Harkin	Shelby
Chafee	Hatch	Simon
Coats	Helms	Simpson
Cochran	Hutchison	Smith
Coverdell	Inhofe	Snowe
Craig	Kassebaum	Specter
D'Amato	Kempthorne	Stevens
Daschle	Kennedy	Thomas
DeWine	Kerry	Thompson
Dole	Kohl	Thurmond
Domenici	Kyl	Warner
Dorgan	Lieberman	Wellstone
Exon	Lott	Wyden

NAYS—31

Akaka	Hatfield	Moseley-Braun
Bingaman	Heflin	Moynihan
Boxer	Hollings	Murray
Bryan	Inouye	Nunn
Bumpers	Jeffords	Pell
Byrd	Johnston	Pryor
Cohen	Kerrey	Reid
Conrad	Lautenberg	Rockefeller
Dodd	Leahy	Sarbanes
Ford	Levin	
Glenn	Mikulski	

So, the conference report was agreed to.

Mr. DOLE. I move to reconsider the vote.

The PRESIDING OFFICER. Without objection, the motion to lay on the table was agreed to.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader.

CORRECTING THE ENROLLMENT OF H.R. 2854

Mr. DOLE. Pursuant to a previous unanimous consent agreement, I now call up Senate Concurrent Resolution 49, correcting the enrollment of the farm conference report.

The PRESIDING OFFICER. Under the previous order Senate Concurrent Resolution 49, a concurrent resolution to correct the enrollment of H.R. 2854 previously submitted by the Senator from Indiana is agreed to.

The concurrent resolution (Senate Concurrent Resolution 49) was agreed to as follows:

S. CON. RES. 49

Resolved by the Senate (the House of Representatives concurring), That the Clerk of the House of Representatives, in the enrollment of the bill (H.R. 2854) to modify the operation of certain agricultural programs, shall make the following corrections:

In section 215—

(1) in paragraph (1), insert ''and'' at the end;

(2) in paragraph (2), strike ''; and'' at the end and insert a period; and

(3) strike paragraph (3).

The PRESIDING OFFICER. Under the previous order, the motion to reconsider that vote is laid on the table.

The motion to lay on the table was agreed to.