

Many of these patients rely on a combination of inhalers to be able to function normally. The FDA's proposed policy would limit their treatment options and force them to switch from proven treatment regimens that have been carefully adjusted to control their symptoms.

Mr. President, asthma is a serious national health problem. The morbidity and mortality rates from asthma continue to increase in the United States, particularly among minority and inner-city children. Mr. President, I think we have to question the FDA's judgment in putting forth a proposal that puts these patients at further risk. I hope others will agree with me as well.

Mr. President, the FDA has already received over 10,000 letters from patients, providers, and health care organizations expressing concern about this issue. In a letter to Health and Human Services Secretary Donna Shalala, Dr. C. Everett Koop, former Surgeon General of this country, wrote the following:

This proposal will adversely impact patient health, while providing negligible environmental benefit.

Dr. Koop went on to state:

Any efforts to limit the medications available to asthma patients and their physicians would be a serious mistake that would lead to severe consequences for American asthmatics.

Mr. President, there is another aspect to this whole issue. Under the proposed guideline, the FDA would remove from the market products that have been tested and labeled for use in children and replace them with CFC-free versions that while containing the same active ingredients have not been tested or approved for use by children. They have not been tested or approved for pediatric use. Mr. President, asthma is the leading cause of chronic illness among children—5 million children suffer from asthma today. How in the world can the FDA remove products from the market which are proven to be safe and effective for children while at the same time the FDA laments the lack of adequately labeled products for children? It just doesn't make sense.

Mr. President, the Food and Drug Administration is charged with protecting the health and well-being of American citizens. It seems incomprehensible to me that it could put forth a proposal that secures really negligible environmental benefits at a potentially steep cost to human lives and health. I urge the FDA to reconsider its proposal. The health of millions of Americans who depend on metered-dose inhalers is too important.

Mr. President, I thank the Chair. I yield the floor.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, what is the question before the Senate and what is the business before the Senate?

The PRESIDING OFFICER. The Senate is conducting morning business with Senators to speak for up to 10 minutes.

Mr. BYRD. I thank the Chair.

Mr. President, I ask unanimous consent that I may speak out of order for as long as I may require.

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

Mr. BYRD. Mr. President, I thank the Chair.

THE LINE-ITEM VETO

Mr. BYRD. Mr. President, I have been intrigued—modestly, if I may say, so as not to exaggerate—at the plethora of complaints that are being in some instances stridently expressed about the President's use of the line-item veto. I suppose what amazes me so much about this matter is that all of this vast panorama of problems that could be expected to occur in the train of passage of the Line-Item Veto Act have been addressed time and time and time again on this Senate floor by me; by my colleague, Senator MOYNIHAN; by my colleague, Senator LEVIN; by my colleague, Senator REID; and many other colleagues on both sides of the aisle, including, of course, former Senator Mark Hatfield. We spoke to the galleries here and across the land repeatedly about what could be expected from the use of a President's line-item veto pen should such legislation be passed. We also spoke of the constitutional ramifications of a line-item veto. At the time, I felt that in all probability our expressions of concern were falling upon deaf ears.

So of late it has been brought home to me very clearly that although one may speak with stentorian voice, as with the combined voices of 50 men or as if his lungs were of brass, there will nonetheless be ears that will not hear, there will be eyes that will not see, and there will apparently be minds that will not think.

So one is left with very little consolation other than to know that what he or she said as a warning in days past was on point, and that history will prove that the point was well taken.

Mr. President, I see my dear friend, Senator MOYNIHAN, who is a great teacher. I wish I would have had the opportunity to sit in his classes—a man who is noted in the Congressional Directory as having received 60 honorary degrees. That will make one sit up and take notice—60 honorary degrees! I have never counted my honorary degrees. But I suppose that if I have been the recipient of ten or a dozen, that would certainly be the limit.

But Senator MOYNIHAN has foreseen the ramifications of this unwise legislative action by the Congress—and it is now coming home to roost—the so-called "Line-Item Veto Act." He has joined with me previously many times in discussing the act here and elsewhere. He has joined with me, as did

Senator LEVIN and former Senator Hatfield and two of our colleagues in the other body, in a court challenge against the Line-Item Veto Act. And he joins with me today in cosponsoring this bill to repeal the line-item veto.

So I am going to yield to him. I have legislation that I have prepared to repeal this act. Senator MOYNIHAN has joined with me in the preparation of the legislation. And I am going to yield to him because, as I understand it, he needs to get to another appointment right away. So I gladly yield to my friend for as long as he wishes. I ask that I be permitted to yield to Senator MOYNIHAN without losing my right to the floor.

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

The Senator from New York.

Mr. MOYNIHAN. Mr. President, it is again an honor and a privilege to join with one of the great constitutionalists in the history of the U.S. Senate, ROBERT C. BYRD, who has written the history of the Senate.

I can so well remember the occasion on which that great volume was introduced. One of our finest American historians was present saying that it is difficult to understand and very hard to forgive that there has been so little scholarly attention given to this body, to the Congress, as against the Presidency, and suggesting that it is not hard to explain. There is only one President, and there are 435 of us—a more complicated subject that comes later in our historymaking.

But I think it may be said that in the history of relations between the Congress and the Presidency there has never been an issue equal in importance to the constitutional challenge we face with the Line-Item Veto Act.

I think of difficulties in the past. There have been clashes between the Executive and the legislative. There are meant to be, sir, I presume to tell you.

Madison and Hamilton, when they explained the Constitution to the people of New York in that series of essays that became the Federalist Papers, said citizens might well ask. At that time people knew the history of classical Greece and Rome, and they knew how turbulent it was. Madison had the solicitous phrase of speaking of the "fugitive existence" of those republics. And they asked: What makes anyone suppose that we will have a better understanding, a better, a more durable existence than those of the past? And the answer was, "We have a new science of politics." That was their phrase, " * * * a new science of politics." Because in the past, theories of government depended on virtue in rulers. We have made up a different arrangement, an arrangement by which the opposing forces, the checks and balances, set off one group against another. And the result is that in the end you have outcomes that make up for—again, a wonderful line of Madison's—"the defect of better motives." And, in that regard the Framers very carefully

defined in article I and article II this distinction.

If I may say, again because it is so important, the framers of the Constitution presumed conflict. They did not assume harmony. They did not assume common interests. They assumed conflict. When they were asked, Why should we expect this Republic to survive given the "fugitive existence" of republics of classical Rome and Greece?, they replied "Because we have a new science of politics." We can have one interest balance another interest. And they devised it because they knew there were conflicting interests.

I believe it would surprise us, Mr. President, to know the extent to which—until the American Constitution came along—political theory assumed virtue and harmony in rulers and in government. We have seen it in our time, sir, in its most notorious form in the dictatorships of the proletariat in the Soviet Union, in the Republic of China, now in North Korea, if you like. The dictatorship of the proletariat is a wonderful way of saying rule by the virtuists, and rule by the virtuists turned out in reality to be rule by tyrants, by monsters. Indeed, Mr. Pol Pot is just now being interviewed by Mr. Thayer in the *Far Eastern Review*, and in the name of virtue, in the name of the people's republic, Mr. Pol Pot murdered perhaps as many as 2 million Cambodians. All in the name of virtue.

Well, this Constitution does not assume virtue. It assumes self-interest. And it carefully balances the power by which one interest will offset another interest and in the outcome make up, again in that wonderful phrase of Madison, "the defect of better motives."

In the judgment of this Senator, shared of course by our revered leader in this regard, nothing could violate that constitutional design more clearly than the Line Item Veto Act. On January 2 of this year, the first business day after the Line Item Veto Act took effect, I joined Senator BYRD, Senator LEVIN, and our never-to-be-forgotten friend from the State of Oregon, the former chairman of the Appropriations Committee, Senator Hatfield, in a lawsuit challenging the constitutionality of that Act on the ground that it violates article I, section 7, clause 2 of the U.S. Constitution, known as the presentment clause.

Mr. President, the issue of this Act's constitutionality has now been commented upon by two Federal judges. In the U.S. District Court for the District of Columbia, Judge Thomas Penfield Jackson took exactly 3 weeks from the date of oral argument to conclude that it is unconstitutional. He wrote in his April 10, 1997 opinion that by passing the Line Item Veto Act, "Congress has turned the constitutional division of responsibilities for legislating on its head."

The Justice Department appealed that decision, and we went to the Supreme Court where, in a manner that I

think is generally understood, the Court is a little shy about getting into arguments between Members of Congress and the President. I could use the image, sir, that the Court likes to see someone before it with a broken arm saying, let me tell you how it happened to me and why. And they held that we did not have standing—seven Justices did. Justice Breyer thought we had standing. But most importantly, sir, Justice Stevens dissented. He said we did have standing, and what is more, that this measure is unconstitutional. He is the one Supreme Court Justice who has commented on the question of this statute's constitutionality. In his opinion he wrote:

The same reason that the respondents have standing provides a sufficient basis for concluding that the statute is unconstitutional.

I quote, Sir, from the case of Franklin D. Raines, Director, Office of Management and Budget, et al., Appellants, versus ROBERT C. BYRD, et al.

Now, this is a constitutional question. There is another more subtle one. It goes directly to the constitutional intention of the separation of powers and the balance of powers, and that is the idea of the shift in power from the Congress to the executive that this legislation makes possible.

In this morning's Washington Post there is an article about the President's recent exercise of this authority. And rather to my distress, if I may say it, a number of Senators on this floor and a number of Members on the House floor have discovered that there is politics being played in the White House. Politics, Mr. President? I am shocked to hear that there are politics in the Presidency. Of course, there are—ever have been. In today's story in the Post a very distinguished scholar, Stanley E. Collender, who is an expert on spending issues, says, "The line-item veto is never going to be a deficit reduction tool and you would think they"—the Congress—"would have realized it when they gave it to the President. It's a raw exercise in power." Mr. President, if you want to shift power from the Congress to the executive, fine. Amend the Constitution. Do not abuse it by statute. And if it came to amending it, I am not sure we would.

I talked earlier about the "Federalist," which was written as essays in New York State newspapers in support of ratification by New York State of the Constitution, which was a very close matter. Rhode Island, as the distinguished sometime President pro tempore knows, was the last to ratify it. It took them years. But they didn't have Madison and Hamilton and Jay to read at the time, and we did.

Now, there has just appeared a wonderful small volume called the New Federalist Papers, a twentieth century fund book written by Alan Brinkley, Nelson Polsby and Kathleen Sullivan. They try to make their essays about the length of the original Federalist. Nelson Polsby has a succinct and devastating essay on the line-item veto.

Nelson Polsby, who happens to be a friend of many years, is Professor of Government at the University of California, Berkeley, and his many books include, most importantly in my view, his book "Congress and the Presidency." And he writes here on the line item veto. He says:

The line-item veto would make Congress severely dependent on Presidential good will. A shrewd President would not veto everything but would use the line-item veto selectively, in effect bribing legislators into cooperating. Americans have a stake in preserving the independent judgment of Congress on issues of public policy. This is not the way to do it.

"Americans," I say again, "have a stake in preserving the independent judgment of Congress on issues of public policy. This is not the way to do it."

I should say that Mark Hatfield, our complaintiff, is using this text in his seminars back in Oregon just now.

Early on in our deliberations—and I hope I will not take any liberty when I say it—a most distinguished and admired colleague, "Mac" Mathias, a Senator from Maryland, who was with us so long, when this first came up commented from his long experience, "The President won't veto any great number of items. He will just let it be known that he can." And the conversation goes as follows: Senator, I know how much this radiation laboratory means to that fine hospital you have worked so hard to develop. I know how much it means to the health of the American people, to science, to medicine. But, you know, Senator, expanding NATO is a very important issue to me. And I hope that if I understand your needs, and I feel your needs, you will understand mine, and surely you will. Can we have that understanding as responsible persons in Government?

Well, that kind of trading goes on and is meant to go on. That's what checks and balances are about. But not with the threat of an unconstitutional act to change a bill passed by this body and the other body and sent to the President, take something out of it, and the bill that in consequence never passed either body becomes law. That violates the Constitution's "single, finely wrought and exhaustively considered procedure," as the Court in *INS versus Chadha* called the presentment clause of article I.

Now if you want to do that, fine. Amend the Constitution. But you cannot amend the Constitution by statute.

I do not want to go on because there are so many distinguished persons in the Chamber, and the Senator from West Virginia, our teacher in these matters, is being very patient. But simply to say, as Mr. Collender says in this morning's Washington Post, this will never save any money. What will happen is, as Mr. Polsby says in his essay, it simply shifts power from the legislative branch to the executive branch. And it does so in a manner that Justice Stevens in the Supreme Court not 4 months ago said is unconstitutional. More I do not know what need

be said. The Congress could do itself a great service by passing Senator BYRD's legislation. Then we would have a real test of political reality. Would that bill be signed or vetoed? We do not know, but one good way to find out is simply to adopt this direct and simple legislation.

Mr. President, I will not go on, but I ask unanimous consent that at this point in my remarks, that there be printed in the RECORD the text of the four pages by Nelson W. Polsby on the line-item veto as published in the New Federalist Papers.

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

[From the "New Federalist Papers"]

ON THE DISTINCTIVENESS OF THE AMERICAN
POLITICAL SYSTEM

(By Nelson W. Polsby)

Americans of a certain age will remember that at the first opportunity after the Allied victory in World War II, the voters, fed up, so it was said, with meat shortages and the privations of war, threw out a large number of incumbent congressmen and elected a new majority. The nation embarked upon a decade or so of jitters focused upon problems of domestic security. The Truman administration, under severe Republican pressure, launched a loyalty/security program. Senator Joseph McCarthy, with his careless charges of communism in government, flourished.

This, evidently, is the way Americans celebrate global victories. Neither the dismantling of the Soviet empire nor the meltdown of the Soviet Union itself seems to have convinced Americans of the possible virtues of their own political system. Rather, complaints about the way the United States is governed have never been louder or more insistent, as "malaise" has given way to "gridlock," and gridlock to "funk" as the most fashionable way to describe a system the chief feature of which is held to be an inability to cope. If presidents and leaders of Congress, Democrats and Republicans, talk this way, never mind advocates of one or more third parties, must they not be right? After all, a key test of the viability of any political system surely must be the willingness of political elites to defend it.

On these grounds alone, the American political system is in plenty of trouble. But a nagging doubt intrudes. One wonders whether the bashing of the political system has been used for narrow partisan purposes and whether, also, it is simply ill-informed.

The American government is not easy to grasp. Most nations are much smaller than the United States, with less space, fewer people. The Western democracies with which the United States is most commonly compared have one-third (Germany) to one-fifth (United Kingdom, France) the population of the United States, and some comparison nations (Sweden, 9 million people; Switzerland, 7 million; Denmark or Israel, 5 million) are even smaller. Only a few of the world's political systems—China, India, Russia, Indonesia, Brazil—have anywhere near the population of the United States, and most of the larger nations—perhaps half our size, like Nigeria, Pakistan, Bangladesh, or Mexico—are governed by tiny groups of bureaucrats, military leaders, families, or cliques of the educated. Thus, even when the political system embraces many people, only a few inhabit the top in the nations as large or larger than the United States. Most democracies of medium size have political classes that are by U.S. standards small.

In the United States, responsibilities for public policy are not concentrated in a few hands but are spread to dozens of different places. Take transportation policy. Roads and their policing are devolved functions of the several states, and the fifty states parcel large chunks of authority out even further to cities, towns, and boroughs within their jurisdictions. To be sure, some transportation policy is made in Washington, for example, the rules governing Amtrak or air traffic control. But the licensing of vehicles, the control of on-street parking, the maintenance of roads and ports, the routing of buses, the building of subways—in short the vast bulk of the gigantic enterprise of American public transportation policy—can be fathomed only by traipsing around the country and looking at the disparate detailed decisions and varied decisionmakers who fix the prices of taxi medallions in New York City and plow the snow off the roads in Minnesota and provide for the coordination of rapid transit routes and schedules in the San Francisco Bay area.

Transportation is only one policy area. There are dozens more, some the responsibility exclusively of national government, some all local, some mixed. These matters are much easier to sort out, and to track, in smaller and less heterogeneous nations, and in nations with unitary constitutions. Federalism, just illustrated in the field of transportation, is embedded in the American Constitution and is one source of the spread of governmental authority, but only one source.

Consider next the separation of powers, a means of organizing government at the center of the political system where power is shared among executive, legislative, and judicial branches, all for some purposes mutually dependent, for other purposes independent of one another. Consider Congress, the world's busiest and most influential national legislature. Proposals go in the door of Congress and regularly emerge transformed by exposure to the complexities of the lawmaking process. Unlike parliamentary bodies that run on the Westminster plan, Congress is an entity independent of the executive branch. Its members are elected state by state, district by district, by voters to whom they are directly responsible. Members are expected to have opinions about public policies, to respond to the concerns of their constituents, and to participate as individuals in the making of laws.

To be sure, Congress has its division of labor; not every member sits on every committee. And who within Congress gets what primary responsibilities is orchestrated by partisan caucuses and party leaders. So the fate of any particular proposal depends greatly on where it is sent—to which subcommittees and committees, superintended by which members. Congress cannot have strong party responsibility without sacrificing some of the advantages of this division of labor, which allows committee specialists to acquire authority over the subject matter in their jurisdictions by learning over time about the substance of public policy. Federalism supports the separation of powers by giving members of Congress roots in their own communities, where local nominating procedures for Congress lie mostly beyond the reach of the president, and of central government.

Beside these two interacting constitutional features—federalism and separation of powers—sits a strong judiciary, fully empowered to review acts of political branches and to reject those acts contradictory to the provisions of the written constitution. The strength of the judiciary evolved as a natural consequence of the existence of enumerated, explicit rights—a Bill of Rights, in

fact—that ordinary citizens possess, mostly phrased as restraints on the government. How can an individual citizen assert these rights except through appeal to the courts? Once courts respond to the piecemeal invocation of the Bill of Rights by citizens, a strong and independent judiciary, and a political system dominated by lawyers, is given a strong evolutionary preference.

Many political systems have one or more of these distinctive features of the American constitutional order: federalism, a separation of powers, a Bill of Rights. All three features, working together in the very large American arena, produce a decentralized party system with its devolved nominations and highly localized public policy preferences, a vibrant, hard to coordinate, independent legislative branch, and lawyers and lawsuits galore.

Giving up any or all of these distinctive features of the American "real-life constitution" is urged mostly in the interests of centralized authority and hierarchical coordination. Most modern democracies, it is pointed out, do without distinctively American constitutional trappings. Why cannot the United States do the same? Perhaps we could if the government of a smaller, more homogeneous nation were at stake. But when the governed are spread far and wide, and are deeply divided by race, religion, and national origin, civil peace may well require political instruments sufficiently decentralized to produce widespread acceptance of national policies and tolerance of national politicians. Although the American system is weak in forward motion, it is strong in its capacity to solicit the marks of legitimacy: acceptance of decisions, willingness to go along, loyalty in time of emergency.

It is, according to this interpretation of the emergent design of the Constitution, thus no accident that the one major period of constitutional breakdown into civil war could be understood as a matter of a failure of center-periphery accommodation. Civil War-era theories of nullification, states' rights, and concurrent majorities were all attempts to fashion an even more developed constitution, one that could contain the enormity of slavery. As this episode teaches, and as observers of events in the modern world from Beirut to Bosnia might attest, obtaining the consent of the governed when the body politic is heterogeneous is no mean feat.

American democracy, on this reading, is more democratic than any of the large, complex nations in the world, and larger and more complex than all of the other democratic nations (save India). Proposals for change that appreciate the size and complexity of the system have a better chance of success than proposals that merely complain that the system is sizable and complicated. Judging from the success of smaller democratic nations, Madison was clearly wrong in arguing that a large, extended republic was necessary to prevent tyranny. But he was undoubtedly right in observing that an extended republic is what the United States would become. In 1787, soon after the Constitution was written, it is recorded that "a lady asked Benjamin Franklin, 'Well, Doctor, what have we got, a republic or a monarchy.' 'A republic,' replied the Doctor, 'if you can keep it.'"

Mr. MOYNIHAN. I thank the Chair. I thank the Senator from West Virginia for yielding me this time.

Mr. BYRD. Mr. President, I thank the distinguished Senator from New York, Mr. MOYNIHAN, our most learned Member, for his eloquent statement in support of the legislation that I am introducing on behalf of myself and the

Senator from New York and the Senator from Michigan. He has never faltered in his opposition to the passage of legislation that would give this President, any President, Democrat or Republican, line-item veto authority. And as he has said so many times, if this is something that is going to be done, it ought to be done as the framers made provision for, and that is by way of a constitutional amendment which will constitute the judgment, hopefully the considered judgment, of the American people from whom all power and authority in this Republic springs. I think Senator MOYNIHAN's reference this morning to the "New Federalist Papers" essays is timely. He was kind enough to give me a copy of that volume which I have not yet had the opportunity to read but which I shall very soon. And he has printed in the RECORD today one of the essays from that volume. I shall look for it in the CONGRESSIONAL RECORD with great interest.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I had a question—

Mr. BYRD. I have the floor.

Mr. CHAFEE. I had a couple questions for the Senator from New York whenever the proper time is.

Mr. BYRD. Mr. President, I will be happy to yield to the distinguished Senator from Rhode Island for the purpose of his propounding those questions, if I may do so without losing my right to the floor.

The PRESIDING OFFICER. Is there objection to the request? If not, the Senator may proceed.

Mr. CHAFEE. Mr. President, I listened carefully to the remarks by the Senator from New York. I am on the other side on this issue. But nonetheless, it was very edifying to hear the comments that the Senator from New York had to make. Several times the Senator from New York said, if I understood correctly, that this measure, this line-item veto, is unconstitutional. My question is, has it been so tested? Or is there anything underway to so test it? In other words, is there a case working its way up through the system to challenge the constitutionality of the line-item veto—which I guess we passed, was it last year? Was it in 1996?

Mr. BYRD. May I respond to that particular question?

Mr. CHAFEE. Surely.

Mr. BYRD. Mr. President, the Senate passed the so-called Line-Item Veto Act on March 23, 1995. The legislation went to conference where it lay dormant for something like a year, and I am told that the standard bearer of the Republican Party in last year's Presidential election prevailed upon the leadership in both Houses to get this matter out of conference and get it passed into law so that, I assume, he, Mr. Dole, would then feel that he would become the first wielder of the pen under this act.

So the leadership went to work and on March 27—these dates are so etched in my gray matter between my two ears that I will never forget the dates. If anything ever happens to my mind and I lose my memory, I daresay this will be one of the last things that will be lost. So, on March 27, 1996, the Senate stabbed itself in the back by adopting that conference report.

I have answered the Senator's question.

Mr. MOYNIHAN. If I might reply to my distinguished friend and chairman who asked, "Who has agreed? If we assert this is unconstitutional, who has agreed?" May I just read a passage from the opinion of the one Justice of the Supreme Court who has commented on the constitutionality question? It was John Paul Stevens, 26 June, 1997. Our complaint had been filed on January 2, the first business day of this year after the act took effect. He says:

The line-item veto purports to establish a procedure for the creation of laws that are truncated versions of bills that have been passed by the Congress and presented to the President for signature. If the procedure were valid, it would deny every Senator and every Representative any opportunity to vote for or against the truncated measure that survives the exercise of the President's cancellation authority. Because the opportunity to cast such votes is a right guaranteed by the text of the Constitution, I think it clear that the persons who are deprived of that right by the act [meaning the plaintiffs] have standing to challenge its constitutionality.

Moreover, because the impairment of that constitutional right has an immediate impact on their official powers, in my judgment they need not wait until after the President has exercised his cancellation authority to bring suit.

Finally, the same reason that the respondents have standing provides a sufficient basis for concluding that the statute is unconstitutional.

Now, on October 16 of this year—this month—the city of New York filed suit with respect to a vetoed item in the Balanced Budget Act of 1997. New York City was joined by the Greater New York Hospital Association and two labor groups that represent hospital workers. I have asked to file an amicus brief. The case is now pending in the district court and we will hear presently from them.

Mr. CHAFEE. I thank the Senator from New York for that description. Because it is interesting. So, now, there is underway an appeal, seeking a court determination.

Mr. MOYNIHAN. By persons I described as standing before the court with a broken arm.

Mr. CHAFEE. I remember when we had the debate on this. I wasn't deeply involved but I supported it. I always have. But I can only believe that there must be a stack of constitutional opinions by learned lawyers, and maybe judges for all I know but certainly many from the legal profession, saying that this, indeed, is constitutional. In other words, the suggestions of the dif-

ficulties and constitutional problems, as outlined by the distinguished Senator from New York and the distinguished Senator from West Virginia, are not new. In other words, they foresaw what was going to happen and raised those points on the floor. So I can only assume that there was all kinds rebuttal information prepared. I will confess I can't remember the debate with that clarity. I certainly remember the Senator from West Virginia was against it right from the word go, that was clear, and spoke eloquently, as did the Senator from New York.

But my question is, there must be a quantity of information or opinion on the other side? I can only assume.

Mr. MOYNIHAN. May I respond to my learned and good friend, there are no judicial pronouncements to the effect that this is constitutional, for the simple reason that it is rather new. It was enacted by Congress for the first time in 1996. But although it has never been adjudicated by the courts, it has been the subject of scholarly commentary. At the time we debated the measure in the Senate, I cited several such scholarly opinions, including those of Lawrence H. Tribe of the Harvard Law School, and Michael J. Gerhardt, then of the Cornell Law School, now dean of Case Western Reserve Law School. I noted that in Professor Tribe's treatise "American Constitutional Law," he writes:

Empowering the President to veto appropriation 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 policy.

He goes on to say:

Congress, which the Constitution makes the master of the 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 of 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.

As the conference report on the Line Item Veto Act came back to the Senate in 1996, we asked Professor Tribe for his opinion, as Senator BYRD will recall. He read the conference report and telephoned in the morning, and he gave us this statement:

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.

I say to my friend once again, if you want to give the President this power, do so in the mode the Constitution provides. That is by constitutional amendment. But you cannot do it by legislation.

Mr. CHAFEE. Thank you very much.

Mr. MOYNIHAN. I thank my friend from Rhode Island. I thank my leader.

(Mr. SMITH of Oregon assumed the chair.)

Mr. BYRD. Mr. President, I thank again my friend, the Senator from New York.

I have been trying to get in touch with Senator LEVIN, but I have been unable to do that today, so I will not add his name at this point until I can be reassured by him that he wishes to be a cosponsor. I have no doubt that he will be. But I shall in due time add his name, and others', if they so wish.

Mr. President, the legislation which I am introducing is very simple. It reads as follows:

The Line Item Veto Act, (Public Law 104-130), and [any] amendments made by that Act [would be] repealed.

The Impoundment Control Act of 1974 shall be applied and administered as if the Line-Item Veto Act had not been enacted.

Mr. President, I hope that we will proceed to have hearings on this legislation that I am introducing on behalf of Mr. MOYNIHAN and myself, and that we can generate some interest on the part of Members to testify on the bill.

Even though there will undoubtedly be more and more cases in the courts resulting from the line-item vetoes that have already occurred, and those that will occur in the future, I think that the legislative branch should proceed to correct the grievous error that it made in passing the act.

In the meantime, I hope that the courts will also proceed. I hope they will not withhold their judicial power and fail to exercise their judicial responsibility simply because Congress, at some point in time, can itself repeal the Line-Item Veto Act.

The point is that, if I am correct in the way I feel about this legislation, our Government is operating under an unconstitutional act with respect to the appropriations process. The President is acting under the presumed authority that he has been given by this nefarious legislation.

But the act itself, I maintain, is unconstitutional. And so, feeling as strongly as I do about the act, I believe that I have a responsibility to offer legislation to repeal it. And that is what I am doing.

In one way or the other, hopefully, the act will be stricken by the Court or repealed by the Congress. And I hope that neither body will wait on the other, that neither department will wait on the other to perform the action that would be necessary.

In offering this legislation, I am attempting to restore the kind of Government, with its separation of powers and checks and balances, that the American people have enjoyed for over 200 years. Never before has Congress enacted legislation that would disturb that separation of powers, those checks and balances.

There has been some talk about it over the years. President Grant first advocated the line-item veto. And the first resolution or the first bill that was ever introduced in the Congress to

provide for a line-item veto was introduced, interestingly enough—or perhaps ironically enough—by a West Virginian—Charles J. Faulkner—a West Virginia Congressman, well over 100 years ago.

And since President Grant's first advocacy, most Presidents, or perhaps all with the exception of President Taft, have advocated the line-item veto.

President Washington, the first President of the United States, indicated unequivocally—unequivocally—that any President, under the Constitution, had to accept legislation in toto. The President had to sign it in toto or veto it in its entirety. He could not pick and choose provisions in a bill.

There have been hundreds of pieces of legislation introduced over the years since the administrations of President Grant that would provide either for a constitutional amendment or provide legislation, such as was the case in this instance, to give the President the line-item veto authority.

I have listened to the arguments over the years. And what I said would happen has come true. There is considerable turbulence now. I said that the outcome of this legislation, if it ever became law, would be that the relations between the executive branch and the legislative branch would be hurt, that it would prove to be bad for the country, that tensions which normally exist and were expected to exist between the branches of Government—expected by the framers to exist—those tensions would be intensified, and they have been.

There has been considerable turbulence on Capitol Hill as a result of the President's having exercised his line-item veto—this new tool, this new and polished, sharp-edged Damocles' sword that now hangs by a slender hair over the head of every legislator on Capitol Hill.

We have given the President a political tool. We have given him a weapon by which he can expect to cower any or all of us and by the threat of the use of that sword which hangs over our collective heads, he will expect to get what he wants, not only on a particular appropriations bill but also in connection with a particular nomination or treaty.

I have said these things time and time and time again. I have said that Senators would rue the day, rue the day that they enacted legislation giving to this President or any President line-item veto authority. The chickens are coming home to roost. Members are already ruing the day on which they voted to give the President this line-item veto. I have said time and time again that the President would use it, that Members would be intimidated by it, and that, to a degree, it would have an impact on our freedom of speech in this body. I am sure that there are Members who will now hesitate in some instances to speak out against the administration because they must

always carry in the back of their minds a remembrance that the President may exact retribution for words spoken in this Chamber or outside the Chamber by Members in criticism of the administration. They will hesitate because they will understand that the President now can wreak some vengeance. He can threaten to cancel this project or to cancel that program that affects a particular constituency or region. It does not have to be one State or one congressional district, it can be an entire region and the veto can be used politically.

I am amazed at the expressions of surprise that the line-item veto is "being used as a political weapon." We need not be surprised that a President will use the item veto as a political weapon. Who is to blame? Not the President. We are to blame. We are supposed to be grown-up men and women. I am amazed, absolutely amazed, that grown-up men and women—who are expected to know something about the Constitution, are expected to have read it at some point in their lives, and who should be expected to retire to it from time to time and read it again or read portions of it—I am amazed that Members who have stood at the desk in front of this Chamber and with upheld right hand, and the left hand on the Bible, literally or figuratively speaking, have sworn an oath to support and defend the Constitution of the United States against all enemies, foreign and domestic, would hand the President such a weapon to be used against themselves.

Then they have turned right around and taken that oath lightly by emasculating the Constitution passing the Line Item Veto Act. Obviously, lightly.

Montesquieu said, when it came to the oath, the ancient Romans were the most religious people in the world. They honored their oath.

The first consul, Lucius Junius Brutus, took office in the year 509 B.C., that being the date when the Roman republic was first established. Lucius Brutus was purported to be a distant ancestor of Marcus Brutus, who was involved in the conspiracy to assassinate Caesar. Lucius Junius Brutus required the people of Rome to swear on oath that never again would they be ruled by a king. Tarquin the Proud had just been vanquished and run out of Rome, and so Lucius Junius Brutus, the first consul—there were two consuls but he was one of the two, and he was most responsible for the driving out of Tarquin the Proud—felt so strongly about the matter that he required an oath on the part of the Roman people that they would never again be ruled by a king.

But it wasn't long until there came to his attention information that his own two sons, Titus and Tiberius, were conspiring to bring back a king, an Etruscan king to rule over Rome.

Upon receiving this information, Brutus called the people to come together in an assembly, and in the midst of the people he had his two sons,

Tiberius and Titus, executed—his own sons—because they had violated their oaths and conspired to reinstitute the monarchy.

The Romans were religiously attached to the oath. They took it seriously. When Marcus Atilius Regulus was sent by the Carthaginians as a prisoner back to the Roman Senate in the year 249 B.C., he went as a prisoner of the Carthaginians. He was a Roman consul and had been taken prisoner by the Carthaginians. In their efforts to secure peace and to have the Romans relinquish Carthaginian prisoners, the Carthaginians sent an envoy to Rome to attempt to work out some arrangements whereby the Carthaginian prisoners would be released and a peace pact could be agreed upon. The Carthaginian Government thought that if they sent this imprisoned Roman consul it would give the delegation more stature and that the Romans would be more likely to come to an agreement.

When Marcus Atilius Regulus reached the Roman Senate he was called upon for his opinion concerning the matter and he told the Roman Senate that in his judgment Rome would not benefit by such a treaty. And he said "I am a chattel of the Carthaginian Government. I am their prisoner and I know that they will hear about what I have stated to the Roman Senate. I know they won't be pleased. Nevertheless, I think it would not benefit my government. I'm with you in spirit. I am a Roman at heart. Even though I am a Carthaginian chattel, I am with you in spirit."

The Roman Senate offered to protect him and proposed that he not return to Carthage, but he said, "I took an oath that I would return. I swore to the Carthaginian Government that I would return." He said, "When I make an oath, even to an enemy, I will keep that oath." He was conscious upon leaving Rome of the tears of his wife and children who clung to him and who begged him not to return to Carthage. Nevertheless, he felt so strongly about keeping his oath that he went back.

As he had predicted, the Carthaginians tortured him. They cut away his eyelids and prepared an enclosure in which there were spikes upon which he was forced to lie, at all times, day and night. With his eyelids cut away, the heat and light from the Sun bore fiercely upon him. He lay upon his back on those spikes, and soon perished. This was an example of a Roman who believed in giving his life rather than break his oath.

I am reminded again of what Montesquieu said: When it came to keeping the oath, the Romans were the most religious people in the world. What about us? How faithful are we in keeping our oath to support and defend the Constitution of the United States? Time and time again I have pondered on this, I have reflected on this, and I have wondered as to how often have Members of the Senate gone back and

reread the Constitution, the charter of our liberties?

Mr. President, we should keep that oath. It is not something to be taken lightly. I think if we take it seriously, we will struggle with our conscience and on matters such as the line-item veto and say to ourselves: How does that fit into this Constitution? Where do I find in this Constitution that the President of the United States has any legislative power? Where is it?

Let me read for the RECORD section 1 of article 1, the very first sentence in the Constitution of the United States, in the operative section. Article 1, section 1: "All legislative powers herein granted * * *"

All legislative powers—not just some, not a few, not most legislative power, but "All legislative powers herein granted." Well, if legislative powers are not "herein granted," they don't exist.

"All legislative powers herein granted shall be vested * * *" Not may be, but "shall be vested in a Congress of the United States." Not in the House of Delegates of West Virginia, but in "a Congress of the United States which shall consist of a Senate and House of Representatives."

There it is. It is not because I said so, but there it is in the Constitution. And yet with English words plainly written and with those words meaning precisely what they say, we nevertheless have ears and cannot hear, eyes that cannot see, and apparently minds that cannot think when we cavalierly give to the President of the United States a line-item veto with its legislative powers.

Now, can we do that? Can we give to the President legislative power? Can we give to the President legislative powers that the Constitution says shall be vested only in one place—the Congress of the United States? Can we, as Members, give away something that is a legislative power? Is it a legislative power? In the Line Item Veto Act, the President is authorized to sign a bill into law, and then, after signing that bill into law, he can "cancel," or repeal, parts of that law.

The Constitution says that the President shall faithfully execute the law. But he has just signed this bill into law and he is allowed, under this nefarious piece of legislation, to go back and pick up the same pen with which he signed an appropriation bill into law and he can strike an item, he can strike two items, or he can strike many items. He can strike away 5 percent of the bill, 10 percent of the bill, 90 percent of the bill. Of course, it is a law by then. He can strike it. He can amend it. He can repeal it.

It is a legislative power to strike an item from an act. When a Senator moves to strike an item from a bill, that is a legislative act. He moves to amend or he moves to strike, and that is a legislative act. That is an action in the legislative process. He is exercising a legislative power. That Senator will

have to have a majority of the Members of the Senate join in support of his motion to strike, else his motion will be lost. "Those in favor of the motion will say aye, those opposed to the motion will say no. In the opinion of the Chair, the ayes have it, the ayes do have it, and the motion is agreed to." If somebody asks for a rollcall or a division, the Chair will proceed accordingly. But a single Member cannot single-handedly strike any item from any bill. He has to go according to the legislative process, which requires a majority of the votes—except in some few instances, which are set forth, in which supermajorities are required. But we are talking here about the normal legislative process.

That Member has not yet succeeded. He can get a headline in the paper, but he has not yet succeeded in striking, or amending, or canceling, or repealing that item.

He has to also have a majority of the other body, and if the other body is in full attendance, as sometimes it is—there are 435 Members there and he has to have 218 Members supporting him in that other body, and 51 in this body, with all 100 Senators present. He has to have a total of 269 votes in both Houses.

That is the legislative process. That is majority rule. And yet to think that grown-up, intelligent, educated, responsible men and women, who are the elected representatives of the people, would come here and cavalierly vote in such a way as to give this President, or any President, Republican, Democrat, Independent, or whatever, the power to unilaterally, with the stroke of a pen, strike out an item in a law; unilaterally, with the stroke of a pen, to amend a law; unilaterally, with the stroke of a pen, to repeal what is in that law that was passed by a majority of the Members of both Houses of Congress—to give all that power to one man, or woman, as the case may be, the President of the United States is beyond all credulity.

It is the acme of ridiculousness to even imagine that an intelligent group of men and women in a civilized body, working under a written Constitution, would even think of doing it. I cannot comprehend what motive may have guided a majority of men and women in these two bodies to prostrate themselves before any President and willingly and voluntarily cede away the power over the purse that has been vested by the Constitution in these two bodies, to the President of the United States.

Men and women have died in past centuries to have that power vested in the hands of the elected representatives of the people. There was the struggle of Englishmen, which extended over centuries of time, against tyrannical monarchs, to wrest the power of the purse away from the kings and entrust it to the elected representatives of the people. And we cavalierly handed it away to the President.

The Roman Senate was not required to yield power to Sulla. The Roman Senate voluntarily handed the power over the purse to Sulla and to Caesar. It made Caesar dictator for 10 years; then it made Caesar dictator for life, with all of the power of the executive and the legislative and the judicial branches in his control. The Roman Senate wasn't required or forced to give Caesar that power; it willingly and voluntarily ceded that power to him. And all of the centuries of time that have come and gone since that fatal act have borne testimony to the unwisdom of the Roman Senate. And history was changed as a result. It had far-reaching consequences when the Roman Senate lost its nerve, lost its vision, lost its way, and willingly and voluntarily ceded over to the dictators, and later to the emperors, the power over the purse. For hundreds of years the Roman Senate had had complete and unchallenged control over the public moneys.

We can also read the history of England—and we will find, as I have already indicated, that Englishmen, for centuries, struggled with monarchs who believed that they ruled by divine right, struggled for the prize—the power over the purse. It was at the point of the sword that Englishmen took from the Kings the power over the purse and vested it in Parliament.

We can see in our own colonial experience the continuing thread of representative government, with the control of the purse being vested in the hands of the elected representatives of the people in the various State assemblies during the colonial period, and later when the colonies became States.

So I am chagrined, I am puzzled, and I am disappointed that Members of Congress would willingly give to any President this power. That is what Congress did.

In looking at the letter I received from the Director of the Office of Management and Budget, Mr. Raines, yesterday, I bemusedly pondered again over these words. I will insert this letter into the RECORD in its entirety.

I ask unanimous consent that the letter be printed in the RECORD at this point.

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

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT
AND BUDGET,

Washington, DC, October 23, 1997.

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

DEAR SENATOR BYRD: I am writing to provide the Administration's views on S. 1292, the bill Disapproving the Cancellations Transmitted by the President on October 6, 1997.

We understand that S. 1292 would disapprove 36 of the 38 projects that the President canceled from the FY 1998 Military Construction Appropriations Act. The Administration strongly opposes this disapproval bill. If the resolution were presented to the President in its current form, the President's

senior advisers would recommend that he veto the bill.

The President carefully reviewed the 145 projects that Congress funded that were not included in the FY 1998 Budget. The President used his responsibility to cancel projects that were not requested in the budget that would not substantially improve the quality of life of military service members and their families, and that would not begin construction in 1998 because the Defense Department reported that no design work had been done on it. The President's action saves \$287 million in budget authority in 1998.

While we strongly oppose S. 1292, we are committed to working with Congress to restore funding for those projects that were canceled as a result of inaccuracies in the data provided by the Department of Defense.

Sincerely,

FRANKLIN D. RAINES,
Director.

Mr. BYRD. We will recall that the President had disapproved various projects that had been included in the Fiscal Year 1998 Military Construction Appropriations Act. The President, under his newly gained authority, had disapproved 38 of the projects. In the letter, Mr. Raines states: "The President used his authority responsibly to cancel projects that were not requested in the budget." He doesn't have any authority that I know of to cancel projects solely on the basis that they were not requested in his budget. He can do it, of course. He has the veto pen. But he is not acting on any "authority" that I know about. It is not in the Constitution. He doesn't get any authority there.

He doesn't get his authority from the Line-Item Veto Act to "cancel projects that were not requested in the budget." That Line Item Veto Act sets forth certain criteria for the guidance of the President in exercising the line-item veto pen. But nowhere in those criteria will there be found a criterion which says that the President may "cancel projects that were not requested in the budget." Yet, Mr. Raines refers to such authority in his letter. "The President used his authority responsibly to cancel projects that were not requested in the budget."

Well, I say, as I have said many times, that the administration—whatever administration is in power—will see that Line Item Veto Act as it wishes to see it. It will read into it whatever it wants to read into it. It will hear whatever it wants to hear from anonymous bureaucrats working in the subterranean tunnels of the White House who will advise the President as to what should be stricken by the veto pen. We can trust them to expand upon the power that has been given them in the act. And they will read into it and interpret the words, and constantly be expanding their power. I predicted that that would be the case.

Mr. President, I hope with this legislation to be able to remove that sword of Damocles that we ourselves helped to suspend over our unlucky and graying heads. But we have nobody to blame except ourselves. I am not going to blame the President if he uses that

authority that we have given to him. We gave it to him without a whimper; no resistance. Resistance? No. We eagerly gave it to him. "Take it, Mr. President. Take it. Take this authority. Take this legislation. Use your veto pen."

President Reagan said we had the line item veto in every State government. "They have it at the State level. Give it to me. If the States can have it, why can't I have it?" I have heard that argument ad nauseam—that if the States have the line item veto power, therefore, why not have it at the Federal level? Why not let the President have the line-item veto? The Governors have it. They balance their budgets. Of course, I argued time and time again that they don't really balance their budgets. They go into debt just as the Federal Government goes into debt. But we were told, "The States have the line item veto. The President should have it."

Mr. President, that kind of an argument signifies and reveals a lack of knowledge on the part of those who use the argument. This is the Constitution of the United States. It is not the constitution of the State of West Virginia or the State of New York or the State of Alabama or the State of Tennessee. It is the Constitution of the United States of America. And this Constitution, while it contains some inhibitions upon certain actions by the States, does not attempt to tell the State governments how they shall legislate. It assures the States of having republican forms of government. But it does not say to any State, "Thou shalt not have the line item veto."

The Constitution, with reference to legislative powers, speaks of the Congress. "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."

There are 50 States. There are 50 State constitutions, and whatever any State wishes to write into its constitution as to a line-item veto power, there is no prohibition in this Federal Constitution against the State's doing it.

The theory and the system of separation of powers and checks and balances are more finely drawn at the Federal level than at the State level. Under our Federal system, we have the separation of powers. We have mixed powers. We have checks and balances. That is at the Federal level.

I heard a Senator say the other day, "Well, I am disappointed that when the President exercised this veto, he didn't do as we are accustomed to seeing done at the State level with the line-item veto." But, Mr. President, that Senator was talking about two entirely different things—apples and oranges, black and white. This is a Federal Constitution that was meant to guide the Congress and the Federal departments and officers of government, and the framers very wisely provided a scheme whereby there would be checks and

there would be balances. There would be the separation of powers, and there would be the interweaving and overlapping of powers between and among the departments. That is at the Federal level.

The State constitutions are different. The State of West Virginia may have the line-item veto. The State of West Virginia has a constitution, and in its legislative branch it is governed by that State constitution until and unless the State takes actions that violate the Federal Constitution. But as to how the State will legislate and as to how the Governor of the State will exercise his veto pen, that is entirely up to the State under its constitution. There can be 50 State line-item vetoes. But those are State constitutions. Those are State governments.

We are talking about the Federal Constitution. Why Senators haven't been able to distinguish between the State and Federal governments. I can't understand. I thought they would have learned that in their civics classes long, long ago. But they should have learned it back in the elementary schools. There are 50 State governments. There is one Federal Government. Each is supreme in its own sphere of actions. But if there is any conflict, the Federal Government—the Federal Constitution—will then prevail. It is that simple. One doesn't have to be a Phi Beta Kappa to know that. Yet, Senators, many of them, and many Members of the other body, in explaining their support for this ill-advised, unwise piece of legislation, took the stand and said, "My own State has it. It works well there. I think that the Federal Government should have it"—thus displaying an amazing lack of knowledge of the Constitution, an amazing lack of knowledge of constitutional history, an amazing lack of knowledge of American history and the history of England.

The Framers of the Constitution were very well aware of the colonial experience and what had happened in England. They knew that a king had had his head severed from his body on January the 30th of 1649. Imagine that. Parliament created the High Court of Justice which concluded that Charles I was a tyrant, a traitor, and an enemy of the good people of England, and that he should have his head severed from his body. That court was created on January 6, 1649, and 24 days later King Charles was dead. He was executed in front of his palace at White Hall before thousands of people. He and his father, James I, had believed that kings ruled by divine might and that they were above Parliament and above the people.

So it is out of that history that the liberties and freedoms of the American people were born. And they are written down and guaranteed in this Constitution.

But I have said these things many times, and, no doubt, if the Lord let's me live and keep my voice, I shall have

the opportunity to say them again on several occasions.

I feel so strongly about this. The Congress of the United States has never, never committed such an act as it committed in enacting the line-item veto. That action flew in the face of the plain English words that are in this Constitution. And Congress did it nonchalantly; cavalierly. Was it being guided by the Constitution? No. Was it being guided by the polls? Apparently. Because it was a popular thing. The American people believed by a tremendous majority that the line-item veto was to be desired.

It won't reduce the national debt. I say to Senators, take a good look at the budget after this year and after next year, if, God forbid, this ill-advised piece of legislation still governs the legislative process. The savings that accrue from the line-item veto will indeed be meager.

I read in the newspapers where the President said he was saving X amount of dollars by these vetoes. Well, he cut out a little item in West Virginia. "Ah, that's why Senator BYRD is against the line-item veto. There it is. He likes his pork. That's why he is opposed to this."

Well, I am not going to ask the President for it back, and if I did, he could not put the vetoed item back. He has cut off its head. He cannot breathe new life into that stiff and cold corpse. After having committed the act of execution, after having wielded the ax, he cannot put it back. I have seen something here and there in the newspapers to the effect that the administration would be willing to negotiate with Senators to restore such vetoed projects. Well, Mr. President, use your pen. Veto the item in West Virginia. There will be other bills coming to you. There will be other items for West Virginia.

The President's advisers may say, perhaps you can get Senator BYRD to negotiate with you if you tell him you won't veto that piece of pork. Perhaps he will vote for your nominee for such and such a position or he will vote for such and such a treaty or he will vote with you on the fast-track bill. Just tell him that you don't want to line-item veto those West Virginia items, that West Virginia pork. Senator BYRD may then come to his senses.

Well, I say go to it. "Lay on, Macduff; and damned be him that first cries 'hold, enough.'" I am not negotiating with any administration over any item for West Virginia.

So much for that. So much for the suggestion that Senator BYRD's pork for West Virginia is why he is against this line-item veto. Well, perish the thought. That has never guided my thinking. I feel more strongly about what the Congress has done in enacting this piece of trash, the line-item veto, than I do about all of the pork that those hollows could possibly hold among the high and majestic mountains of what I consider to be the greatest State in the Union, whose

motto is "Mountaineers are always free."

Mr. President, could the Senate of the United States give away its advice and consent power? No. Could the Senate of the United States give away its power to try impeachments? No. There are other powers in the Constitution that this Senate and the Congress, as the case may be, cannot give away. And I maintain that the same is true with the legislative power that is set forth in the first sentence of the Constitution.

There are those who would be willing to sit down with the White House, with the representatives of the President, on items that he may threaten to veto. There are Senators, there are Members of the House, who may be willing to sit down and negotiate with the White House, to come to terms, as it were, to yield to the administration on this matter or that matter, or some aspect of the appropriation which he has threatened to veto. There will be those who may very well be lured by the siren call of negotiation in order to save the project of a particular Member of the Senate or House of Representatives.

I say to my colleagues, don't negotiate, because when an item has reached the stage of conference, I think that we have reached a stage when it is too late to negotiate.

Some subcommittees spend weeks and months in studying appropriations bills that come under their jurisdiction. The people who sit on a particular subcommittee that has jurisdiction over a particular appropriation bill are, for the most part, experts in the subject matter of that appropriations bill. Some have had experience for years and years, perhaps even decades, in dealing with that particular appropriation. They know the subject matter well. They have worked over it. They have had their staffs work on it. They have received the budgets that have been submitted by the President. They already know what the wishes of the administration are. And from time to time they receive further guidance as to the wishes of the administration with respect to a particular project or program, or with respect to all of the items in the President's budget that are within the jurisdiction of that subcommittee. They have had all that guidance all along and it has been good. And we welcome that guidance.

But once the subcommittees go through all of these months of labor, and with their staffs working hard on legislation, it is too late when, at the last minute, the White House sends its representatives up to Capitol Hill and says, "This is veto bait. That item is veto bait. That project is veto bait. The White House will not accept it. The White House wants thus and so. That wasn't in the President's budget."

Where in the Constitution are we told that the Congress may only consider items that are in the President's budget? Is that inscribed in any law,

that Congress may only consider items that are in the President's budget; that Members of Congress can't add items of their own, based on the needs of their own constituents, needs which they, the elected representatives, know best? Where is it written that Congress has to be confined only to the items that are in the President's budget? Where is that set down in stone? I have never seen it in stone or in bronze, or inscribed upon any piece of granite. It just isn't there.

I am not willing at that point, then, to sit down and be jerked around by any administration, Republican or Democrat. They are all the same, as far as I am concerned, when it comes to this matter that we are discussing.

I was chairman of the Appropriations Committee for 6 years. I said, "There will be no politics in here, no partisanship." When Senator Hatfield was chairman of the committee there was no partisanship. When Senator Stennis was chairman of the committee we didn't have politics in the committee. As far as I am concerned, there are no Democrats and no Republicans on the Appropriations Committee. We are all Members of the Senate and there is no partisanship. If they want to argue over politics they can do it on the floor, but we don't do it in that committee.

And I feel that Members have just as much right under the Constitution and laws of this land, its customs, traditions and regulations—just as much right as any administration has to request appropriations for projects and programs that are deemed to be in the interests of the constituencies of the elected representatives.

So I will not hear—I have ears, but will not hear those who exhort, "That little item you have in West Virginia is veto bait." I say, "Go ahead, go ahead, veto it. Lay on, Macduff." That's the way I feel about the projects of other Members.

I want to help the President where I can help him. I want to help the administration where I can help it. There have been times when I have helped Republican administrations and Republican Presidents. But this is one Senator who will not be persuaded or swayed by threats that, "That item is veto bait. You'll have to modify it, you'll have to do it our way or the President will veto it."

So, Senators, don't negotiate. In so doing we legitimize what I consider to be an illegitimate end run around the Constitution of the United States. We legitimize it. That's where the administration wants us. That's where they would like to have us—under their thumb. "Oh, we've got them now, they are negotiating."

Finally, just a word more about the letter that I received yesterday from Director Raines, the Executive Office of the President. It says in the last paragraph, "While we strongly oppose S. 1292"—we? Who is "we"? I wish the President would have signed the letter

himself. But I understand he can't sign all the mail that goes out of his office. I know who is purportedly the author of the letter. But, nevertheless it says:

While we strongly oppose S. 1292, we are committed to working with Congress to restore funding for those projects that were canceled as a result of inaccuracies in the data provided to the Department of Defense.

Now, in saying that, the President, through his surrogate, admits that some of the projects were canceled based on errors, based on inaccuracies, based on data that were inaccurate and provided by the Department of Defense. The administration was mistaken in exercising the veto pen, and they admit it there.

I would like for any Senator within the range of my voice, or anybody else, to tell me how Mr. Raines, or the President, or anybody in the administration, expects to, "restore funding for those projects that were canceled as a result of inaccuracies in the data provided by the Department of Defense." Mr. Raines says that we—I assume that he means by "we," the personal pronoun "we," I assume he means the President and the administration, "we"—"While we strongly oppose [this disapproval resolution] * * * we are committed to working with Congress to restore funding for those projects that were canceled. * * *"

Now, how is the funding going to be restored? Those projects are dead. The head has been severed, the corpse has been laid out on a piece of cold marble and every drop of blood has been drained from the veins of those projects. How, then, do they propose to restore funding? How is it going to be done? The item has been canceled. The President has unilaterally exercised a legislative act and unilaterally repealed that legislation. It is dead. That project is dead. The line-item veto does not give the President the authority to restore it. It may have been an item that he canceled 5 minutes after he had signed the bill into law. He may have slept on it a while and then overnight thought, "Well, I think it might be a good idea to cancel a few more of those items," and he cancels a few more. And the third day after the bill has become law, some of his aides come to him and say, "Mr. President, we think we have found some more. We didn't find it written in the four corners of the appropriations bill, we found it in a table. We found it in a committee report."

These aides will say to the President, "You know what? We have been working 36 hours and we find projects on these tables that are not in the bill. Don't look in there, Mr. President. But there are tables that were used in some hearings, or used during markup. And in those tables we have found some more items that we think you ought to consider vetoing," and the President goes back and he vetoes them. Then along comes the 5th day, the 23rd hour and the 59th minute, and the President thinks, "Ah, that BOB BYRD, he said one day, he wouldn't negotiate. Can

you find another item for me? I want to strike one of his projects. I'll make him rue the day he said those words."

In any event, those items are gone. The President cannot go back and restore them, no matter how sorry he may be. He finds from the Department of Defense data that he was mistaken; the data were wrong. It is too late.

So how does Mr. Raines intend to work with Congress to restore funding for those projects that were cancelled? Tell me how? How do they intend to restore funding? They can't be restored by inoculation, by the use of a needle. How do they intend to restore funding?

As I was saying earlier, they claimed that they saved x millions of dollars through these cancellations, but Senators should watch. That project that they struck out of that bill for West Virginia this year, I intend to try to put it back next year, because it can be justified. It is important to the defense of this country. It is in the 5-year plan of the Department of Defense. I intend to put it back in.

That may be a year away. So, have they saved money? How much does one subtract from the figures that they say they save through their actions, through the President's actions in line-item vetoing these projects? As we look back a year from now, how much will they have saved when some or most of the items will have been put back into the bills we pass next year?

Many of the projects will be put back, so the President's veto of projects really won't constitute savings after all. What it will result in is perhaps increased costs because of inflation or other reasons; the items will cost more when they are put back.

Therefore, while it warms the cockles of my heart to see in the letter from Mr. Raines that "the administration is committed to working with Congress to restore the funding for those projects that were canceled," I shall go home wondering what is meant by that, how they will work with Congress to restore the funding. How will they do it?

Mr. President, I hope that by introducing legislation today to restore the legislative branch to the standing and the stature that it has had for over 200 years, I hope to contribute to the welfare of my country, the well-being of our people, the perpetuation of the dream of America and the dream of a system that has its roots, not just in Philadelphia in the year 1787, but also in the colonial experience, and the history of England, roots that extend back, yes, as Montesquieu thought, even to the ancient Romans.

I hope that we will restore the system which was given to us by our forebears and which they expected us to hand on to our sons and daughters.

Who saves his country saves all things, saves himself and all things saved do bless him.

Who let's his country die let's all things die, dies himself ignobly, and all things dying curse him.

Mr. President, let us act and let us work to save our country!

I ask unanimous consent that an article in the Washington Post titled "Line-Item Veto Tips Traditional Balance of Power" be printed in the RECORD.

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

[From the Washington Post, Oct. 24, 1997]

LINE-ITEM VETO TIPS TRADITIONAL BALANCE OF POWER—CAPITOL HILL PLOTS STRATEGY TO COUNTER PRESIDENT'S PEN

(By Guy Gugliotta and Eric Pianin)

On Oct. 6, Sen. Conrad Burns (R-Mont.) invited President Clinton to lunch at Montana's Malmstrom Air Force Base's dining hall, a broken-down wreck whose "serving areas," he said later, "would be borderline" on a health inspection.

Clinton had just used his new line-item veto power to strike the dining hall's proposed \$4.5 million rehab from one of the annual spending bills, and Burns, a senior member of the Senate Appropriations Committee with enormous responsibility for military construction projects, told Clinton he was "disappointed" by the decision. He wanted to discuss it "and other important projects" at "your convenience."

The advent of the line-item veto has shaken the 200-year-old power relationships in the federal government. While presidents have always paid close attention to their own priorities, the veto has given them an unprecedented ability to micromanage the appropriations process.

White House sources say the line-item veto has provoked a blizzard of letters and phone calls from Congress to Clinton, touting the merits of tiny projects that until this year were tucked so deeply into appropriations bills that they scarcely merited a presidential glance.

Thus Burns, chairman of the Senate's military construction subcommittee, lost his own project in his own bill. Burns shrugged off the snub, but said, "We haven't given up on this." The Malmstrom rehab, he said, is included in legislation to override the veto that the Appropriations Committee approved yesterday.

Micromanaging projects may be the most obvious evidence of the new executive presence in Congress's business, but many experts and lawmakers believe it may be only the tip of the iceberg. Both Republicans and Democrats worry presidents may use the veto to extract promises of support on unrelated legislation, exact revenge against political enemies or to make policy, leaning on individual lawmakers where they are most vulnerable—tending to their home town affairs.

"It's not lost on me that this has political overtones, but that's fine, it comes with the territory," said Sen. Rick Santorum (R-Pa.), a conservative, who, like Burns, lost a military construction project to the veto pen. "If you're a big boy, you take your lumps and go after them next year."

But many lawmakers have decided not to sit still, and budget mavens on Capitol Hill are brainstorming ways to counter or cope with the veto. Some appropriators are talking about legislative mechanisms to immunize particular items; others are suggesting that obvious veto bait be jettisoned from the final versions of bills.

Others see the veto as a precedent-setting escape mechanism that could be used to break deadlock on controversial appropriations bills. They say the president could veto provisions he opposes, but let the rest stand,

thus averting the danger of a government shutdown or the need for an interim spending measure based on the previous year's expenditures. Congress has yet to clear six of the 13 annual spending bills, three weeks after the start of the fiscal year.

Still, cautioned House Appropriations Committee Chairman Bob Livingston (R-La.), it is too early to predict what will happen. "When the president signed the line-item veto legislation we were all shooting in the dark as far as how it would work. We are still groping."

One thing on which almost everyone interviewed could agree, however, was that the line-item veto would not serve as a significant brake on federal spending, even for parochial "pork-barrel" projects. Of the five appropriations bills signed so far, only \$458 million in projects has been lined out by Clinton, or less than a percentage point of the \$291.3 billion in the bills.

"The line-item veto is never going to be a deficit reduction tool, and you think they [Congress] would have realized it when they gave it to the president," said Stanley E. Collender, an expert on federal spending issues. "It's a raw exercise in power."

The line-item veto, a pillar of the House Republicans' "Contract With America," passed both houses of Congress overwhelmingly and was signed into law in early 1996.

It took effect during the budget year that began Oct. 1.

The law has been challenged in court for radically altering the balance of power within the federal government without the enactment of a constitutional amendment. Many experts believe the law will be struck down, but until it is, the president for the first time in history may delete individual spending items from appropriations bills without vetoing the entire bill.

Clinton first used the authority in August to veto three provisions from the five-year omnibus budget agreement, but it was not until Oct. 6, when he struck 38 projects worth \$287 million from Burns's military construction appropriations bill, that he caught Congress's attention.

"He had to convince everybody he was willing to use it," Collender said.

Lawmakers were convinced. The vetoes touched off an uproar among congressional leaders who had not been consulted in advance. "We're dealing with a raw abuse of political power by a president who doesn't have to run again," thundered Senate Appropriations Committee Chairman Ted Stevens (R-Alaska).

But since the military construction vetoes, Clinton has used the authority sparingly on three other appropriations bills, prompting speculation in some quarters that he had become gun shy after the initial upheaval.

Just yesterday, Office of Management and Budget Director Franklin D. Raines acknowledged that several projects were mistakenly crossed out of the military construction bill. In a letter to Stevens, Raines said, "We are committed to working with Congress to restore funding for those projects that were canceled as a result of inaccuracies in the data provided by the Department of Defense."

"This is clearly evolving," said Senate Budget Committee staff director G. William Hoagland. "Maybe like the kid in the candy store, his eyes were bigger than his stomach, and now he sees he has to be careful not to jeopardize the power."

But OMB spokesman Lawrence J. Haas said there was no "pattern" of political manipulation. The president, he said, was trying to use the veto "because of the substance before him, not because of the politics."

A crucial test may come next week when Clinton will examine the Veterans Affairs-

Housing and Urban Development and independent agencies appropriations bill. Lawmakers acknowledge it is full of special projects, and one White House source described the bill as "one of the most project-based in years."

Despite uncertainty about how Clinton will next use the veto, it is clear that Congress is wary and mistrustful. "I've never seen a vote taken where more people wanted their vote back," said House Appropriations Committee member Rep. Jose E. Serrano (D-N.Y.), who opposed the line-item veto.

Indeed, hundreds of lawmakers have been contacting the White House since the military construction bill. Burns and Santorum wrote to complain about vetoes already exercised and to warn of adverse consequences to military readiness.

Florida Sens. Bob Graham (D) and Connie Mack (R), by contrast, wrote a joint letter stressing the need for \$1 million to establish a Central Florida High Intensity Drug Trafficking Area. "We would request that you keep in mind the importance of the Central Florida HIDTA to the national war on drugs and to us personally as you consider the Fiscal Year 1998 Treasury Appropriation," the letter said. The line item survived.

Among those who lost favored projects, Rep. Jerry Lewis (R-Calif.) was still steamed a week after Clinton vetoed his district's \$4 million breast cancer research grant. And he spoke of exacting a penalty—suggesting he might oppose Clinton in his efforts to obtain "fast-track" authority to negotiate trade agreements. "I don't like to link things," he said, but "there is a two-way street here."

Collender cautioned that in the revenge game, "the president holds all the cards." A member may withhold one vote, but he will lose on another bill or be embarrassed on another line-item, Collender said. "The president may lose a battle, but he will win the war."

Most lawmakers, however, agreed with former Congressional Budget Office director Robert D. Reischauer, who described veto gamesmanship as "a two-edged sword. The more influence the president tries to exert, the more of a backlash he will see. We have already seen it."

Sen. Bob Kerrey (D-Neb.) used the line-item veto as his state's governor, but voted against the federal line-item veto. He said it gave the president too much power, suggesting he could use it to trade projects for votes. "Now the president is going to say, 'I want X,' would you help me? And the answer will be, 'Yes, but what are you going to do for me this year?'"

This is one way the president can make policy with the line-item veto. Another way is to veto items that effectively eliminate entire programs. Clinton has already done this by striking our \$39 million for the SR-71 Blackbird spy plane, said Sen. John McCain (R-Ariz.). "They never wanted to keep it."

McCain, a dedicated cost-cutter who has criticized Clinton for not being aggressive enough with the veto, nevertheless cautions against "politicizing" the process and permanently poisoning relations between the two branches of government.

As for those who complain about the veto, McCain noted that many lawmakers spent years fighting for it when a Democratic Congress remained adamantly opposed. "To my Republican colleagues, I say, 'Be careful what you ask for. You may get it.'"

Mr. BYRD. Mr. President, I send to the desk the bill to which I have referred, and I ask unanimous consent that it be printed in the RECORD and that it be appropriately referred.

The PRESIDING OFFICER. Without objection, it is so ordered. The bill will be received and appropriately referred.

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

S. 1319

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REPEAL OF THE LINE ITEM VETO ACT OF 1996.

(a) IN GENERAL.—The Line Item Veto Act (Public Law 104-130) and the amendments made by that Act are repealed.

(b) APPLICABILITY.—The Impoundment Control Act of 1974 shall be applied and administered as if the Line Item Veto Act had not been enacted.

Mr. BYRD. I yield the floor.

INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT OF 1997

Mr. LOTT. I now ask the Senate resume the highway bill.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows.

A bill (S. 1173) to authorize funds for construction of highways, for highway safety programs, and for mass transit programs, and for other purposes.

The Senate continued with the consideration of the bill.

CLOTURE MOTION

Mr. LOTT. Mr. President, I send a cloture motion to the desk.

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

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the modified committee amendment to S. 1173, the Intermodal Surface Transportation Efficiency Act:

Trent Lott, John Chafee, John Ashcroft, Larry Craig, Don Nickles, Mike DeWine, Frank Murkowski, Richard Shelby, Gordon Smith, Robert Bennett, Craig Thomas, Pat Roberts, Mitch McConnell, Conrad Burns, Spence Abraham, and Jesse Helms.

Mr. LOTT. For the information of all Senators, I have just filed the last cloture motion to the highway bill. This cloture vote will occur on Tuesday. If cloture is not invoked on Tuesday, I will have to ask the Senate then to move on to other items.

Needless to say, I hope cloture will be invoked on Tuesday. I know there are some Senators who have voted against cloture three times who intend to vote for it if this is going to be the last one. I have, as majority leader, basically given 2 weeks to opening statements and a preliminary discussion about the highway bill while we tried to see if other issues could be resolved. But unless we can get cloture invoked and I can unstack the tree of amendments and allow us to go forward with full de-

bate and amendments on ISTEA, if this matter is going to continue to be held up at the insistence of Senator MCCAIN and Senator FEINGOLD because of the campaign finance reform issue, then I have no alternative but to stop.

I really think that is unfortunate. I think the Senate was showing leadership by moving on to the ISTEA highway bill. The Environment and Public Works Committee came up with a good bill. It was reported unanimously from the committee. I think we would show leadership to pass the 6-year bill whereas the House had only passed a 6-month extension. I think it would be better for the country if we did this bill now. I think it would be better for the Senate if we did it now. I think that next spring or next summer or, heaven forbid, next fall, if we are still working on the highway bill, it will get tougher and tougher and tougher as more problems are developed, more amendments are written and as we get closer to elections. Every State is going to believe it has to have a little bit more, a little bit more for highways and bridges. That is fine. We all need that. But we need some kind of closure on how we deal with the formula and what funds are going to be available to our States.

I think this is very unfortunate. I do not see there is any process now for there even to be a short-term extension. Everything seems to be tied to something on campaign finance reform that we have not been able to develop yet. I want to emphasize to all Senators that yesterday I believed Senator DASCHLE and I had come very, very close to having an agreement worked out whereby we would consider this other, unrelated to the highway bill, campaign finance issue next March, by the end of the first week in March, and that amendments would be in order and that there wasn't going to be an effort to fill up the tree and that Senators could offer amendments, first degree, second degree, and motions to table would be in order. Everything would basically go the regular order. But for some reason, at the last minute, interested Senators could not agree to that, but a very good-faith effort was made by Senators on both sides of the aisle and on both sides of the issue, and it did not come about.

I am willing to have the Senate have this issue before it and have one more cloture vote, but then we will have to move on.

I also want to emphasize that next Monday we do intend to take up some important issues, including the Interior appropriations conference report we have finally completed action on. If we have to, we are going to call for a vote on the Federal Reserve nominees that the President has sent to the Senate and the Senate committee has now reported to the full Senate for action. And we are going to have to take up legislation dealing with the threatened Amtrak strike.

So we will have a full plate of things to do Monday and Tuesday, and we

hope other appropriations bills will be ready in short order next week. In fact, we had meetings this morning on two of them, the Labor, HHS appropriations bill—we think maybe some good progress was made there, I say to the Senator from West Virginia—and we are getting closer, I believe, on the foreign operations appropriations bill. So we have other business that we need to do and must do, and we cannot give the balance of our time to the delay of the ISTEA bill based on the campaign finance reform issue.

MORNING BUSINESS

Mr. LOTT. Mr. President, I now ask unanimous consent that the Senate resume morning business with Senators permitted to speak up to 5 minutes each.

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

UNITED STATES-CHINA RELATIONS

Mr. ASHCROFT. Mr. President, I rise today to address the state of United States-China relations as the summit with Chinese President Jiang Zemin approaches. President Clinton is expected to give a speech this afternoon on United States-China relations, a speech that will, no doubt, continue to defend the administration's policy of so-called "constructive engagement" with China. The policy generally posits that there is no alternative for the United States but to accommodate China in virtually any behavior in hope of establishing a good relationship with Beijing.

I want to be clear that I certainly do hope that a stable and positive relationship can be established between our two countries, but the administration's China policy of engagement gives little regard to the behavior of China and is putting the prospect of a strong relationship with Beijing at risk. Rather than constructively engage Beijing, this administration's China policy has been advanced at the expense of discarded American principles and lost United States credibility in the international arena. For instance, China has a weapons proliferation record that is unrivaled in the world, distributing weapons of mass destruction in spite of previous nonproliferation commitments. Beijing also maintains trade barriers which continue to block United States goods and United States companies from being involved in the kind of free and open commerce we should have with China. And in the last several years, Beijing has had a human rights record that has resulted in the most intense religious persecution in several decades, and in the silencing of all active political dissidents.

The latest State Department report on human rights noted that all Chinese political dissidents had been detained and imprisoned. We have to remind