

DISAPPROVAL ACT

The Senate continued with the consideration of the bill.

Mr. BURNS. Mr. President, we still have two more Senators who have indicated to us they wished to make statements on this particular issue, and we will give them a chance to get here. I warn Senators they should come to the floor and make their statements now because we want to get to a vote on this issue. We have other business pending in the Senate that we would like to get to. But if those Senators can get to the floor and make those statements, we will wait a few minutes on them. If not, then I would choose, with the permission of the leadership, to move to third reading on this bill.

In the meantime, Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Idaho is recognized.

Mr. KEMPTHORNE. I rise today in support of S. 1292, a bill to disapprove of President's Clinton decision to veto over 30 military construction projects.

I will add, Mr. President, I am a proponent of the line-item veto. I believe the line-item veto can be an effective tool to eliminate wasteful spending but I believe the fact that the White House now admits it used faulty data when it decided to veto a number of military construction projects demonstrates that this important authority must be used wisely and carefully.

I would like to speak for a moment about the two military construction projects the President vetoed in the State of Idaho. Both projects were intended to support the combat requirements of the 366th Composite Wing based at Mountain Home Air Force Base.

A recent letter to me from Secretary of Defense Cohen described the critical role played by the 366th Composite Wing: "As one of the first units to deploy to a problem area, it has the responsibility to neutralize enemy forces. It must maintain peak readiness to respond rapidly and effectively to diverse situations and conflicts."

In an ironic twist of fate, the 366th was doing its mission on deployment in the Persian Gulf when the President took inaccurate information, provided by the Air Force, and vetoed two projects intended to support the combat effectiveness of this unit.

President Clinton used his line-item veto pen to delete \$9.2 million for an avionics facility for the B-1 bombers and \$3.7 million for a squadron operations facility for an F-15 squadron.

In his veto statement, the President claimed the vetoed construction projects could not be started in fiscal year 1998 because there was no design

work on the proposed projects. This assertion has now been proven false by a letter from the Deputy Secretary of Defense, John Hamre, which now acknowledges that the DOD provided inaccurate data about the status of design work.

With respect to the two projects at Mountain Home Air Force Base, the outdated Air Force data provided to the White House listed both projects at zero percent design when in fact, as now verified by Air Force, both projects are in fact over 35 percent designed. Moreover, before any of these projects could be included in the fiscal year 1998 Defense authorization bill, the services were required to certify that each of the projects could be initiated in fiscal year 1998 and that is what they did, without exception.

As my colleagues know, the Department of Defense puts together a future years defense plan which projects the DOD budget 6 years into the future. Regarding the two projects at Mountain Home, I note that the avionics facility is contained in the Air Force's 1999 budget and the F-15 squadron operations facility is contained in the service's 2000 budget.

As the President ponders the use of the line-item veto, I think there needs to be dialog with the legislative branch. If there had been dialog, we might have been able to point out the faulty data being used by the White House that was provided by the U.S. Air Force.

Early this year Congress and the President reached an historic agreement to balance the budget and increase defense spending above the President's request. Congress went through its normal deliberative process and we used the additional defense dollars to move forward funding for projects on the service's unfunded requirements lists. Indeed, the B-1 avionics facility was one of the top 10 unfunded military construction projects identified by the Air Force. In addition, the funds were within the budget caps agreed to by the Congress and the President.

Let me read a document, prepared by the 366th Wing, which explains why we need the B-1 avionics facility. This was written by the civil engineer at the base avionics facility:

Current facility is inefficient, aging, wooden building misconfigured for avionics functions. Numerous false alarms in the fire suppression systems cause excessive avionics support equipment down-time and often cause damage to test equipment. This facility supports over \$1 billion of avionics equipment for the wing's fighter aircraft with \$115 million in testing equipment. Current avionics facility is approximately one-half the size required for all the wing's aircraft and has severe operational problems supporting fighter aircraft of this wing. About 33,000 sq. ft. of the existing 54,000 sq. ft. facility is condemned for personnel usage. B-1 avionics is currently being maintained at Ellsworth AFB, South Dakota due to inadequate facilities at this base. Engineering estimates by the Army Corps of Engineers found the current facility is uneconomical to renovate.

Construction of a new facility collocating avionics for the B-1 and fighter aircraft is the most economical solution and finalizes the B-1 beddown program.

The Office of Management and Budget and the Deputy Secretary of Defense acknowledge the President used outdated and inaccurate data to make his decisions. The Senate should give the President another opportunity to do the right thing and pass the pending disapproval legislation.

Let me thank the chairman of the Senate Appropriations Committee, Senator STEVENS, and the ranking member, Senator BYRD for their quick and decisive action to bring this important legislation to the Senate floor. I urge my colleagues to support the pending legislation.

I yield the floor.

Mr. BURNS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BURNS. I think the Senator from Idaho has brought up a good point making the case for his facility because I think we found this throughout this whole message from the administration, that, again, they don't give us the criteria before we finally pass the conference report and send it down there. All at once, then the criteria change. I guess that should not surprise me. We ought to get used to dealing with folks who have goalposts on wheels; they sort of change every now and again.

I hope we could make it through this thing and the Members realize that every project has been through the screens, two or three of them. The ranking member on this subcommittee, the chairman, and the ranking member of the full committee have set their satchel down, set certain standards, and we tried to meet those standards.

I thank the Senator from Idaho for his comments.

Mr. KEMPTHORNE. Mr. President, will the Senator yield?

Mr. BURNS. I will yield.

Mr. KEMPTHORNE. It is just for a question.

Would the Senator from Montana agree with me that as we are provided the data, although the idea was that these projects were not necessary, were not needed, yet we find they are in the President's own budget for the very next year or the year following that? And, since we have all of this data and we have established, through written information from the Air Force, the inaccuracy of the data that they provided the White House, the President and the White House should not find themselves in a situation where they feel they have drawn a line in the sand and there is no way they can back away from this; that it is best for the Nation and our national defense for the White House to acknowledge that, based on inaccurate data, we all should review this and come to a different conclusion, and that is to allow these projects to go forward?

Mr. BURNS. One advantage of the line-item veto right now is it demands

of us a dialog with the people who have to administer the programs. That is good. So I agree with the Senator's statement wholeheartedly, and I thank the Senator from Idaho.

I yield to the Senator from New Mexico.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. DOMENICI. Mr. President, are we on a time limitation?

The PRESIDING OFFICER. The time is controlled.

Mr. DOMENICI. I did not hear the Chair.

The PRESIDING OFFICER. The time is controlled.

Mr. DOMENICI. How much time does the Senator have?

The PRESIDING OFFICER. The Senator has 4 hours remaining.

Mr. DOMENICI. I didn't want to cut some other Senator short, but clearly—

Mr. BURNS. How much of that 4 hours would you like, Senator?

Mr. DOMENICI. I am not going to impinge on anybody with my remarks. I have been in another hearing and for that reason I have been trying to get recognition as soon as I can, and I will be as brief as I can.

The PRESIDING OFFICER. The Senator is recognized.

Mr. DOMENICI. Mr. President, I rise today in support of the resolution of disapproval of the fiscal year 1998 military construction appropriations bill. In his special veto message, the President offered the following three criteria for each of the canceled items: "The project is being canceled for because:

"First, it was not requested in the President's fiscal year 1998 budget; second, it would not substantially improve the quality of life of military service members and their families; and third, architectural engineering and design of this project has not started, making it unlikely that these funds can be used for construction during fiscal year 1998."

Mr. President, the Congress gave the President line-item veto authority to eliminate unnecessary and wasteful spending. The Congress examined all of these projects very carefully and found them to be merit worthy and mission essential. In fact, the Appropriations Committee used stringent criteria including:

First, whether the project was mission essential; second, whether the project will enhance readiness, safety, or working conditions for service personnel; third, whether a site has been identified for the project; fourth, whether any money has been spent on the design or the project; fifth, whether the Department can begin to execute the project during fiscal year 1998; and, sixth, whether the project was included in the Department's future year defense plan.

Mr. President, these projects substantially meet the criteria established by the Appropriations Committee.

Moreover, the Appropriations Committee worked closely with the military services in crafting its bill. In contrast, it is widely known that the President neglected to consult the military services in deciding which projects should be vetoed on this bill.

First, I want to make clear that if the President thinks that the only good project is one that he recommends, then he will continue to meet strong opposition in the Congress. I remind the President that article I, section 8, of the Constitution gives the Congress the right to raise and support armies. That means that if the Congress believes that a particular project will support the needs and requirements of the military that is not only their right, but their responsibility, to do so.

I am heartened by the fact that the President has used his line-item veto pen more sparingly on the various appropriations bills that have been sent to him since this military construction bill. However, Mr. President, let's be clear about his action on this particular bill. I believe it was an abuse of his authority for three reasons. First, vetoing these projects will not eliminate unnecessary or wasteful spending. Second, it is clear that none of the spending in this bill violates the budget agreement. Finally, using the President's own criteria, it is clear that the President made several errors.

On October 6, 1997, the chairman of the Appropriations Committee conducted a hearing to review the status of the 38 vetoed projects. Throughout the hearing, Senators asked the witnesses whether particular vetoed projects met the criteria as set out by the President. Most questions centered on the issue of whether each project could be executed in fiscal year 1998 and if that project were mission essential. In every case, Mr. President, the answers were affirmative.

Among the items the President vetoed were two New Mexico projects. The first project was \$14 million for the construction of a new building for the theater air command control and simulation facility [TACCSF] at Kirtland Air Force Base [KAFB]. This project is in the Department's fiscal year 2002 budget. It is mission essential; 35 percent of the design has been completed with \$1.4 million the Congress appropriated last year for this purpose. A site has been chosen for the project, and it is executable this year. Clearly, Mr. President, the President made a serious error in vetoing this project.

The TACCSF is the only facility where fighter crews, command control personnel, and air defense teams operate together in a realistic virtual war fighting environment. TACCSF allows Air Force war fighters to train with Army and Marine personnel under one roof, often their only opportunity to rehearse shoot-don't shoot procedures in a complex friend or foe environment.

Expanding TACCSF's simulation capabilities will support cost-effective

development of Air Force systems. TACCSF has flexible simulation architecture that allows new concepts, components, or procedures to be tested in a virtual environment, giving hands-on experience years prior to first prototype—user feedback during early design results in enormous development cost savings.

TACCSF's present building does not allow for any expansion. A new facility is needed to meet growth needs. It is impossible to expand the current facility sufficiently to accommodate the simulators, supporting infrastructure and personnel growth needed to maintain TACCSF's preeminent capabilities. Failure to provide the requested new facility seriously jeopardizes TACCSF's ability to support DOD and the Air Force's vision for modeling and simulation in support of the war fighter.

The second project the President vetoed was \$6.9 million for the launch complex revitalization program at White Sands missile range. Once again, using the President's own criteria, he made a serious error. This project will substantially improve the quality of life of military service members, 10 percent of the design has been completed, and the project is executable in fiscal year 1998. The project is mission essential and there is no question that it will enhance safety.

Four launch complexes at WSMR are suffering from deterioration in crumbling structures, failing facility components and below-par sanitary and sewage systems. Many of the complex facilities do not meet current safety laws and regulations. Adequate fire detection and suppression systems do not exist in the buildings and explosive handling areas. WSMR spokesmen have stated, "This totally involves a safety issue. There's quite a bit of activity that is conducted at these launch complexes. It is a potential breeding ground for hantavirus if infrastructure improvements to these areas is not made." Moreover, Mr. President, the commanding general of WSMR stated in a letter to the delegation members that he was very concerned about the safety of his people who worked in these facilities.

Mr. President, the President made serious errors on both these projects. All of them are mission essential and can be executed in fiscal year 1998. The Presidents' arbitrary and unfair exercise of his power demands the Congress' action. I applaud the chairman and ranking member for acting timely on this matter. I strongly support it, and hope my colleagues will do the same.

Mr. President, I have a letter dated April 18, 1997, from General Laws, Brigadier General, U.S. Army, Commanding General at White Sands missile range, to House of Representatives Member from New Mexico, the Hon. JOE SKEEN. I ask unanimous consent that be printed in the RECORD.

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

DEPARTMENT OF THE ARMY,
August 18, 1997.

Hon. JOE R. SKEEN,
House of Representatives,
Washington, DC.

DEAR MR. SKEEN: This information is provided in response to your question on the health and safety matters at launch facilities at White Sands Missile Range. As you are aware from your recent visit to White Sands Missile Range (WSMR), extensive parts of our infrastructure, particularly the vital launch complexes, are in disrepair or an unserviceable. Many of these conditions entail critical safety and environmental problems that earnestly must be addressed as soon as possible.

Recently, we were required to disconnect the water supply that feeds a fire suppression system at a major missile assembly building due to uncontrollable and excessive plumbing leaks. We have many buildings at these launch complexes with inoperable heating and cooling systems. We also have septic systems that have or are failing, and will have to be deactivated due to environmental reasons. The resource reductions of the last several years have exacerbated the already significant backlog of maintenance and repair to the aging infrastructure of WSMR.

Aside from the increasing difficulties for our personnel to accomplish the critical test and evaluation mission for major programs of all the services in DOD, I am very concerned for their safety and health from working in such conditions. I deeply appreciate your consideration of these issues.

Sincerely,

TERRY L. LAWS,
Brigadier General,
U.S. Army, Commanding General.

Mr. DOMENICI. Mr. President, now I would like to talk to my fellow Senators. In particular I would like to talk to the Republicans on this side of the aisle. I say that because I hear some of them asking questions about why were we for line-item veto and how can we justify voting to override the President. If it fits some Senators' concerns on the other side, fine.

Let me just say, fellow Republicans, we took the lead, once we got control of the House and Senate, to pass this new law called line-item veto. I want to make sure everybody understands that we could not have intended to say that we would never override a President's line-item veto. Obviously, when we passed that, inherent in our passage of that measure was the fact that Congress still had to have some significant say about the propriety, the validity, the appropriateness of line-item vetoes. If it means, if we supported the original line-item veto legislation, whatever the President chooses to do under line-item veto, since we voted for that law we have to concede the President's authority, then I don't think any on this side of the aisle would raise

their hands and say that is what they voted for line-item veto to mean. I can assure you I did not.

As a matter of fact, I would submit that it is quite right for the Senate of the United States to stand on its two feet and say to the President: You have line-item veto authority but it does not mean you can exercise it any old way you want. The sooner we send that signal to this President—either a Republican President or this one—the sooner you send the signal that there are certain circumstances under which, by virtue of our authority, that we would say “no” to a President, the better the President will respect the propriety of the notion that we are equal under the Constitution and that the President didn't gain superiority over appropriations when we passed the line-item veto legislation.

So it is almost as if we have a gift of the right situation to send that signal to the President, because in this case there is no doubt of the following set of circumstances.

No. 1, it is now acknowledged by the White House that many of the line-item vetoes, if not all, were issued and done by the President in error. Nobody will come to this floor and deny that. The problem is, they won't tell us how many are in error. We have concluded that almost every one that is on this list, in this bill of override, is in error, if we believed the statements by the White House as to why the line-item veto was used in the first place. We went through each one. We put the financial management officers for the three armed services in front of the Appropriations Committee and asked them the questions that related, not to something we dreamt up, but something the White House told us were the criteria.

Mr. President, they were simple criteria: Is project in the 1998 budget request, or did we just dream it up? Question No. 1. Second, has the engineering and design has started? And tied into that one is that the project contracts could be issued in 1998, the year of this appropriation. And the third one, that it was something that would improve the quality of life of military men and women and their families?

Frankly, we asked the questions of the military financial officers. In almost every one of these 38 projects, they said they were in the Defense Department 5-year plan, or they did do substantial improvement to quality of life, to family life, or third, design had been started and the project could commence during the appropriation year of 1998.

When the White House then says, well, it may be that we in the White House made mistakes; that 18 of these

vetoed projects don't fit our own criteria; it may be that 16 didn't fit our criteria—in any event, we are not going to tell you exactly which ones. I say to the Senators who are wondering whether they should vote for this, that is enough to vote for the override. If you ever want to change the power structure, then let a President get by with that. He line-item vetoes and then he says, “I made a mistake, but I am sticking with them and I am not going to tell you which ones I made a mistake on.” If you can't discern that, then it seems to me you have to send it back to him with a great big vote in the Senate and the House saying, “Since you won't tell us, we are giving them all back to you. And if you send them back, we are going to adopt them in law and override your veto, because you haven't squared with us.”

I can think of some other reasons. Each Senator who voted for the line-item veto and who is worried about whether he can now vote to override, I ask just a simple question. Did you really mean you would never override? Of course you would say no. If you meant you might override sometimes, what is a more perfect case than this? You have two reasons: The projects are bona fide projects that meet any reasonable criteria; and the President will not tell us which ones are incorrectly vetoes, although he says there are some, that don't fit the criteria.

I know there are some former Governors in the Senate who are going to speak to line-item veto. I don't know which way they are coming down on this. But I take it from many Governors that they never had such a large argument over line-item veto in many years of being Governors; that all of a sudden you get 38 projects out of one bill, \$287 million, and they don't know why it was done or why others were left in.

So, from our standpoint, this is the appropriate time to send a signal that line-item veto is not a one-way street; that Congress has a role. If it is not used reasonably and rationally as a policy instrument, then it will be overridden, and I hope we do that. I hope it is a very big bipartisan vote, because I think it is apt to be the same in the U.S. House of Representatives. We will start this process off on the right track.

Mr. President, I ask unanimous consent that that a table from the Congressional Budget Office comparing the pending bill to the President's original line-item veto message be printed in the RECORD.

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

EFFECT OF S. 1292, DISAPPROVING CANCELLATIONS MADE BY THE PRESIDENT ON OCTOBER 6, 1997, REGARDING P.L. 105-45

[By fiscal year, in millions of dollars]

	Budget Authority	Outlays				
		1998	1999	2000	2001	2002
Total CBO estimate of cancellations made by the President to P.L. 105-45	287	28	102	79	46	16
Projects not disapproved in S. 1292, as reported in the Senate						
Military Construction, Navy						
Chemical-Biological Warfare Detection Center, Crane Naval Surface Warfare Center, IN (97-15)	4	8	2	1	1	(¹)
Military Construction, Air Force Reserve						
Base Civil Engineer Complex, Grissom Air Reserve Base, IN (97-16)	9	1	4	2	1	1
Aerial Port Training Facility, Mitchell Air Reserve Station, WI (97-41)	4	1	2	1	1	(¹)
Total, Military Construction, Air Force Reserve	13	2	6	3	2	1
Military Construction, Army National Guard						
Aviation Support Facility, Rapid City, SD (97-31)	5	(¹)	1	2	1	(¹)
Total projects not disapproved in S. 1292, as reported in the Senate	22	10	9	6	4	1
Difference between S. 1292 and the President's cancellations	264	18	93	72	42	15

Source: Congressional Budget Office. Note: Details may not add to totals due to rounding. ¹=Less than \$500 thousand

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER (Mr. KEMPTHORNE). Who yields time?

Mr. GRAHAM. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. GRAHAM. Thank you, Mr. President.

Mr. President, I am here to speak on two of the specific projects that are covered by this veto and now the proposal to override that veto, and then, second, I will make some remarks based on my own personal experience as to how the relationships between the legislative and the executive branches should function when the Executive has the line-item veto.

First, let me turn to two projects with which I have extensive familiarity.

First, a pier improvement project at the Mayport Naval Station near Jacksonville, FL. Mayport has been designated by the Navy to be the second Atlantic coast major naval facility, the first being Norfolk. In order to carry out this role, it has been determined by the Navy that it is necessary to make certain improvements to the piers that serve Mayport Naval Station. The improvements were included in the 5-year Navy plan.

The Navy made another decision, and that was to utilize a design-build process as the means for constructing these pier improvements. In contrast to a traditional procedure in which a project is fully designed and then contractors bid on those completed designs, design-build merges the creative and the execution stages which one firm is responsible for submitting a bid to both design a project that will meet the needs of the client, in this case the Navy, and then to construct that project. It also has the benefits that the project can be segmented, so that if there are portions of the project that can proceed ahead on a more rapid pace because they are less complex or have less design requirements, they can be doing so.

The result of this design-build process for the Navy has been both a significant savings in time and cost.

A recent study by the Design-Build Institute of America states that over the last 4 years, naval facilities utilizing this design-build process have led to a timesaving of 15 percent over the conventional method of first de-

sign, then bid, then build, and a cost savings of 12 percent. That design-build process was determined to be appropriate to this pier improvement at Mayport.

The significance of that, Mr. President, is that it runs in conflict with one of the criteria that the President used in determining which projects to veto, because one of those criteria was, was this project one which had been designed and, therefore, construction could commence in this fiscal year? In the case of a design-build project, you don't have a separate sequence of design. The design and the construction project are issued as one.

In the case of Mayport, the Navy expectation is that they will issue their design-build contract in March of 1998. At this point, some of the real benefits of design-build begin to take effect. As an example, the toe wall of these particular piers will use a similar design to the toe wall of piers that are immediately adjacent, and, therefore, the expectation is that they will use the same designs which have already been done, therefore allowing the construction work on the toe wall to commence in June of 1998.

Another important component of this pier improvement is to add a new electrical circuit so that the ships which have higher electrical demand today, because of all of their computerization and other electronics, will be adequately served. This electrical work represents a fifth circuit to the already existing four circuits. And so, again, no significant new design work will be required. It is expected that the electrical construction work will also commence in June of 1998.

So the facts of this case are that, if the purpose of that standard, which was, is the design complete so construction can start? has been met, the only difference is because this is a design-build contract as opposed to a traditional contract, you can't answer the question, is there a completed set of designs here ready to be bid upon? It is ironic that the design-build process was specifically recognized and applauded in the reinvention-of-Government study that was done in 1993 as the wave of the future as to how the Federal Government should go about much of its construction activity.

So, Mr. President, with that background on Mayport, I believe this clearly is one of those projects where

the facts do not substantiate the reasoning that was given as the basis of the veto. We have an important project meeting a clear national defense need which the Navy has stated should be completed within the 5-year plan. The Navy has selected a design-build process which will result in construction commencing on important elements of this pier improvement in June of 1998.

The second item which is of concern to me relates to Whiting Field, a major Navy aviation training center in Santa Rosa County, FL. Whiting Field is the centerpiece of actually a series of fields of runways and other training facilities that are located throughout northwest Florida and south Alabama.

The Air Force and the Navy have decided on an eminently reasonable new joint project, and that is, that rather than having the basic training of naval aviators being done exclusively by the Navy and Air Force aviators being done exclusively by the Air Force, that they will develop joint training at the primary and advanced levels. Whiting Field has been designated as the field upon which approximately half of the primary training for both Air Force and Navy pilots will occur.

A new aircraft has been selected, called JPATS, which will serve the needs of both the Navy and the Air Force. This new aircraft has some different requirements than the aircraft which the Navy has used for many years at Whiting Field. One of those is a slightly longer runway for safety purposes. It is a somewhat higher performance aircraft.

In this legislation was \$1.2 million to add to the length of one of the outlying fields which serves Whiting, which happens to be located in Brewton, AL. Also, as part of this \$1.2 million, will be a safety zone built around one of these runways in order to enhance the safety for aviators with this new higher performance JPATS aircraft. Again, this is in the Navy's 5-year plan. The JPATS aircraft are going to be delivered in the year 2000.

The work to be done is not high-tech, it is the extension of an existing runway, and, therefore, the development of complicated designs is not relevant to the project to be performed. Therefore,

again, the rationale for the veto, which was that unless design had been conducted, assumedly construction could not start in the fiscal year and, therefore, the project became a candidate and, in fact, a victim of the President's veto.

Just as the project at Mayport, this meets all the tests. In this case, the Navy and the Air Force have agreed that this is a needed project to secure an important new joint relationship between our two principal aviation services which will result in significant savings to the Nation and, hopefully, enhancements in the quality of training and the jointness of training of the Air Force and the Navy.

I had the opportunity to visit Whiting Field in August of this year, and I can state from personal experience and discussions with the leadership of this important naval facility that there is great commitment to seeing that this joint training is a success and a contribution to the Nation's security. All this is going to have a key date of the year 2000 when the new aircraft begin to be delivered.

So, Mr. President, I urge that these and the other projects that are contained in the legislation to override the President's veto be supported, because I believe they are the kind of projects which the Nation will need for its long-term national security. I commend the leadership of the Appropriations Committee and the Military Construction Subcommittee for their careful attention to these two projects.

If I can take a brief period to comment about the line-item veto process. I was Governor of the State of Florida for 8 years with the line-item veto authority, and I utilized that authority where I thought appropriate. I believe that the most significant use of the line-item veto is in its deterrence effect. The fact that legislators who might be inclined to submit and seek passage of a project that did not have the positive qualities of Mayport and Whiting Field would be inclined to do so but for the fact that they knew the Executive could identify them as being inappropriate and, therefore, subject that sponsoring legislator to the public scrutiny of having advanced such a proposal.

But I believe for that deterrence to be effective, there are some requirements on the side of the executive branch which were not met in this first test of the line-item veto at the Federal level.

Two of those requirements are, first, no surprises. Neither of these projects are new to the Navy, to the Air Force, to the Office of Management and Budget, to the White House. These projects represent the completion of important previously determined military priorities: Mayport as the second naval port on the Atlantic coast; joint training of Air Force and naval aviators.

Therefore, as these two projects moved through the appropriations process, there were plenty of opportu-

nities, if it was felt that they were going to be subject to veto, to have sent up such a signal. No such signal was sent.

The assumption was, since they had the support of the Department of Defense, and they were within the 5-year plan, that they were projects that had a time urgency, that they were appropriate.

In the future, I would urge whoever is the Executive authority to be engaged in this process at a much earlier stage to indicate if there are some problems and what the nature of those concerns will be. As the chairman has indicated, apparently even he did not know what the criteria were to be for these projects until after the Congress had passed the final bill and sent it to the White House for its consideration.

And the second is that after the bill has gone to the White House, and they are looking at these items, if they see an item that they believe is a candidate for veto, they owe it to themselves, they owe it to the sponsoring individuals and agencies, and they owe it to the national objectives which are sought to be achieved to have a frank discussion with the parties who are most knowledgeable so that they can get the facts.

I made an effort on both of these projects to educate who I thought were the appropriate people. Obviously, my attempt at education was not successful. But I am confident that had there been a full opportunity to review the facts that I have briefly submitted here this afternoon, that the White House would have made a different decision relative to these two projects.

So I think, second, that the White House needs to have the practice to bring into the process before the final decision those who are most knowledgeable so that never again will it have to issue statements that: "I'm sorry I did this. And I did it out of ignorance." Ignorance declared is a sign of a person who is ready to enter into confession and redemption, but this process is too important to have very many confessions and redemptions. We ought to try to be operating based on facts and knowledge and the importance to the national security of these significant defense items.

So, Mr. President, with those comments on these two specific projects, and a little unsolicited advice to the White House, I urge a strong Senate vote in favor of this proposal.

I hope that our colleagues in the House will follow suit and the President will see the wisdom of the line-item veto process in its full extension of a dynamic relationship between two equal branches of the U.S. Government. Thank you.

Mr. BURNS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BURNS. Mr. President, we have one other scheduled speaker after Senator GRAHAM, and then Senator BYRD has requested some time. But I ask

unanimous consent that the vote on S. 1292 take place at 4:30 this afternoon, and reserving 10 minutes for the ranking member of the full committee and recognizing Senator BUMPERS as the next speaker.

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

Mr. BUMPERS. Mr. President, parliamentary inquiry. Who controls the time on this side?

Mr. BYRD. Mr. President, how much time does the Senator need?

Mr. BUMPERS. Ten minutes.

Mr. BYRD. I believe I am in control of time, am I not?

The PRESIDING OFFICER. The Senator is correct.

Mr. BYRD. I yield to the Senator 10 minutes.

Mr. BUMPERS. Thank you very much.

Mr. President, we are here today debating this issue which was a political creation in the beginning. It was a terrible idea and in my opinion, plainly unconstitutional. Ronald Reagan was President. He had promised the American people he would balance the budget by 1984 after he was sworn in in 1981. And in 1984 we did not have a balanced budget. On the contrary, deficits were soaring wildly out of control.

And then we begin to hear and read where the President said, "Well, you can't blame me because, you know, I can't spend a penny that Congress doesn't appropriate." And I am not going to belabor that argument, but the next thing we heard was, "If only the President could pick out all those pork projects and veto them, these deficits wouldn't be soaring out of control."

First of all, if the President had full line-item veto authority at the time, according to most calculations, the amount of dollar savings as a result of those vetoes would have been infinitesimal in comparison to that staggering deficit. All that line item veto talk was nothing but a sheer diversionary tactic in the face of a promise that had not been kept.

And I do not mean to denigrate President Reagan. But that rhetoric was the genesis of a very bad idea and in my opinion a patently unconstitutional idea.

I am almost bitter, Mr. President, at the passage of this line item veto. The worst thing that can happen to a politician is to allow himself to become cynical or bitter, so I will say that I am elated. I am elated that this day has come.

A lot of the people in this body stood and made magnificent speeches about how wonderful the line-item veto would be. They declared that 80 percent of the American people favored the line-item veto. I understand that; I took a lot of political heat, along with a lot of people on this side of the aisle who stood up against the line item veto. Senator Hatfield, who is no longer in the Senate, stood up against

it, along with a few people on that side of the aisle. We all took unbelievable political heat back home because it was wildly popular. The people had been led to believe, and they did in fact believe that the real problem with the spending habits of Congress was that the President did not have the line-item veto. So I don't know how many times the line item veto proposal was presented in this body, but I promise you I voted no, no, no every time.

So I am elated today because a lot of the people who got a lot of political benefit out of their support for the line item veto are now complaining. They are not saying that it was a mistake to pass it in the first place. No, they say that the trouble is that the President has abused the authority. Regardless of whether the President has properly vetoed these items before us today, I am not surprised at their protests. This is precisely what we told them they could expect if they passed the line-item veto. It is a bad idea, and plainly unconstitutional in the way it transfers the power of the purse to the President.

I heard Senator GRAHAM from Florida about his use of the line-item veto when he was Governor of Florida. I had the line-item veto when I was Governor of Arkansas—and I used it. You know how I used it? I would call a legislator down to my office and say, "You just voted against that administration bill, and you have a \$250,000 appropriation coming for a big project in your district. And I can tell you, that sucker's toast unless you get down there and change your vote." That is what I did.

One of the arguments we made here was that the President could cow virtually any Member of the U.S. Senate with a line-item veto. I do not think President Clinton intended to insult Members of this body when he vetoed these 34 items, but it was a terrible political mistake.

Any time you veto bills that affect more than 25 States, you are in trouble. I do not think the President was really thinking about that. Incidentally, he followed me as Governor of Arkansas. And he used the line-item veto pretty extensively when he was Governor. But one of the main reasons I object to it is that it gives the President unbelievable power over the Members of this body. And I can tell you, the Framers of the Constitution never intended for a President to have that kind of power. That is the reason they said: The Congress will pass the laws, and present them to the President, not item by item, but bill by bill.

So, Mr. President, in conclusion, let me say I hope some of my colleagues will take this to heart and not trivialize the Constitution. It is almost contemptuous the way we treat our Constitution sometimes. I have voted for one constitutional amendment since I came to the U.S. Senate. That was the Equal Rights Amendment. I am sorry I voted for that, because it is not necessary. I have voted "no" 37

times on constitutional amendments, and "yes" once, and I regret that one. That is not to say I will never vote for a constitutional amendment, obviously. I reserve judgment on that.

But the thing that chagrins me more than anything else is that every time somebody comes up with a cute political idea, they want to put it in the Constitution. And I have taken heat on prayer in school and the balanced budget amendment and flag burning and term limits, and court-stripping proposals. I have taken my share of heat on all those things, almost every one of which undeniably was political.

So, as I say, if some of my colleagues—if as many as one colleague today is thinking, "I regret having voted for this thing. I regret having voted for something that in my heart I knew was unconstitutional," I hope those members will think hard about this vote. Let me close, Mr. President, by saying that I am going to vote to uphold the President's veto. That may sound a little bit perverse, I suppose, based on what I have been saying. I do not know all the merits of these 34 items. That probably does not speak well for me, but I can tell you one thing, if one of them affected Arkansas, I would be voting to override it. And this entire package of line item vetoes is going to be overwhelmingly overridden by this body. There may not be five votes to uphold the President.

But I will vote to uphold the veto and I will tell you precisely why. I want to make it so painful to support the line item veto that when we come to our senses and the legislation comes up to repeal the line-item veto, that it will be passed 100 to nothing. So the more pain we inflict, the more likely that is to occur.

Ultimately, I think the line item veto will be repealed. I think that if Senator BYRD could bring up his line-item veto repeal today, I would like to believe it would pass almost 100 to zip. It was a terrible idea. And the time has come when the Senate should think better of it.

I look forward to getting a piece of legislation up here even before the Supreme Court strikes it down. I personally believe the Supreme Court has very little alternative but to declare this thing unconstitutional when it is presented to them by somebody with standing.

So, Mr. President, this is really a happy day for me, now that the Senate is addressing this item.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. BYRD. Mr. President, I yield the distinguished Senator from Virginia [Mr. ROBB] 10 minutes.

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

Mr. ROBB. Thank you, Mr. President.

And I thank the distinguished senior Senator from West Virginia for yielding me time because he knows, as I

have already alerted him to the fact, that I am going to speak against the position that he has taken for so long and with such eloquence.

And as the distinguished senior Senator from Arkansas departs, let me say, I agree with almost everything he said, save one small part of the speech that he just made. And I have joined him in voting against most of those other amendments.

But I rise today to oppose S. 1292 because I believe the credibility of the Senate is on the line.

Just last year, 69 U.S. Senators voted to give the President line-item veto authority. As a former chief executive who had the line-item veto authority, as indeed most Governors have that authority, I supported that decision. I did not use it in the way the senior Senator from Arkansas used it, but I had the authority. And I support it because I believe that only the President has the singular ability to reconcile the competing spending interests of all 535 Members of Congress and make decisions that will be based on our national interests.

Today, unfortunately, we stand ready to emasculate completely the line-item veto authority.

I realize that many distinguished Members of this body, some of whom have been heard today, many of whom have been heard from on previous occasions, oppose the line-item veto, and have consistently opposed the line-item veto, and indeed believe it is unconstitutional.

I would concede that it is quite possible that the Supreme Court will declare it unconstitutional when they consider it on the merits in a suit brought by plaintiffs who have standing to do so. But let's not pass a bill disapproving the President's veto of nearly every single project he lined out in the military construction appropriations bill.

What credibility can supporters of the line-item veto have if, in the first appropriations bill out of the gate, we vote to disapprove the President's action simply because one of our projects is on the list?

Mr. President, I don't diminish the political difficulty this legislation poses for Members who have projects on this list. I have three projects on the cancellation list that are in my home State of Virginia. Since I believe these projects have merit, I will work to fund them in future bills. While I do believe strongly that we need to develop some objective criteria for the President to follow when making veto decisions, I never thought that the implementation of the line-item veto would be popular with either the President or Congress.

What I find objectionable about this legislation is that we didn't even try to determine the merits of the President's cancellations except for individual Members within their individual States. Instead, to maximize political

support, we gave, in effect, every Senator line-item veto authority in reverse—allowing each Member to decide whether appropriations for his or her own projects would be restored. The result is that funding for 34 of the 38 projects vetoed by the President are included in this bill.

Is that what line-item veto supporters had in mind last year? It is certainly not what I had in mind, Mr. President.

Mr. President, quite simply, this legislation is a test of our resolve to stick by our decision to impose a measure of fiscal discipline on the appropriations process. We gave the President the authority. We expected him to use it. Even those who opposed the legislation expected him to use it. And he did. I am simply not prepared to say that all of the President's actions were totally without justification.

Mr. President, I urge my colleagues to vote against this disapproval bill. Passage of this bill will increase the deficit and set a dangerous precedent that I believe will lead to the emasculation of the line-item veto. But most importantly, Mr. President, passage of this bill would illustrate once again our own failure to make the tough choices, our own failure to be fiscally responsible.

Mr. President, I am under no illusions about what is going to happen in this particular case. But I hope before Senators cast their votes, they will think about what it was they thought they were doing when they voted for the line-item veto last year and vote in accordance with the convictions they had last year when they vote on this bill this year.

With that, Mr. President, I yield the floor, with particular thanks to the distinguished senior Senator from West Virginia, who knew I was going to speak against the legislation, which I know he has so eloquently opposed for so very long.

Mr. STEVENS. I understand the position of the Senator from Virginia, but I would like him to consider this: We had \$800 million allocated to the military construction budget out of the budget agreement that was entered into with the President. That still left us \$700 million below the 1997 level. The action of the President in vetoing 38 projects here has removed \$287 million from that.

If this bill does not pass, that money is gone. But not only is it gone, the President has announced the 18 he made a mistake on he will fund by reprogramming over other money. So the net result of the President's veto is an excess of \$450 million that is lost from the defense budget this year.

Now, it was a mistake. This was not a line-item veto that made sense. It was a sheer mistake. They will not tell us which projects, by the way, he made a mistake on. I wonder if the Senator from Virginia knows that?

The net result of not passing this bill will be that almost half a billion of the

money that we got through the negotiations with the President to increase the defense budget will be gone forever, including quality-of-life projects, barracks, mess halls, housing. I ask the Senator, how can you justify voting for this if you are in favor of the line-item veto?

I was the chairman of the Senate conference on the line-item veto. I know the requirements of the line-item veto law. The President did not follow it. He did not establish criteria. He announced the criteria after—after—after the decision was made.

In the case of Virginia, as the Senator pointed out, the criteria didn't fit the Virginia projects. That was true on 36 of the 38 projects. Those 36 are in this bill.

Now, I say to my friend from Virginia, bad facts make bad law. If this bill doesn't pass, I guarantee the Senator from Virginia, this case will be taken to the courts, and if it is taken to the courts, this will be the vehicle that will lead to the destruction of the line-item veto.

We are coming at it from different directions, the Senator from Virginia and I. I still believe in the line-item veto, but if the President's veto is not overridden, I will join the Senator from West Virginia in seeking to repeal the line-item veto, because this is wrong. This is arrogance, an abuse of power, and it is an overwhelming mistake on the part of the executive branch.

I thank the Senator for listening to me. If the Senator from Virginia wishes to have time to respond, I yield from our time.

The PRESIDING OFFICER (Mr. ALLARD). The Senator from Virginia is recognized.

Mr. ROBB. Thank you, Mr. President. I would like to respond very briefly to my friend and colleague and the distinguished senior Senator from Alaska, for whom I have enormous respect.

I suggest two things: No. 1, that I share the concern about the imperfect process that was followed in this particular instance. I have shared my concerns directly with the White House, and I hope we will not have a repeat of the lack of prior consultation, et cetera. So I am not in disagreement with that particular aspect.

But the matter of how many dollars are actually involved is not the issue, as far as I'm concerned. It is the principle. If we believe that the President ought to have this particular authority because we believe only a President can reconcile all of the disparate interests of 535 Members of Congress who may have an interest in a project that may not have true national interest, then we have given him the authority to veto that particular item, and given us an opportunity to override it.

If this particular legislation were designed to collect only those about which there was agreement or only those individual projects which we could consider on their merit, I might well support the distinguished Senator's bill.

My objection with this legislation is that we have, in effect, taken every single request by any Senator who asked to have one of the items that was vetoed included in this bill and said, "We are going to, in one single bill, notwithstanding whatever merit or lack of merit may be evident in these particular items, we are going to tell the President he can't do that." I simply disagree.

Second, I disagree with the principle that if you are for the line-item veto in principle but can't stand the heat when it applies to a project in your particular district, then, indeed, you ought not to be for the line-item veto.

I would not argue with the basic premise of the Senator's remarks that if the distinguished senior Senator from West Virginia's legislation to repeal the line-item veto were offered again today, that it might well garner overwhelming support, although I am in a position to suggest that it might not be unanimous.

Mr. STEVENS. There is no Alaska project that was eliminated by the President.

Second, the difficulty that I really have with what the Senator has said is the line-item veto was intended to eliminate waste or projects that would lead to a deficit. We asked for the list. Can the Senator now tell me what 18 or 19 projects the President made a mistake on? Can he give us a list? We never got a list. We have 36 to 38 projects in this bill—because we never got a list from the White House as to what projects the President admitted were erroneously line-item vetoed.

Mr. ROBB. If the Senator will yield to respond on that particular matter, Mr. President, I remind the distinguished Senator from Alaska that I could not agree with him more. I think it is wrong.

I agree with the Senator from Arizona, with whom I discussed the problem earlier, that we ought to establish clear criteria, and those criteria ought to be made known to those who would be affected by them, as well as all the rest of the Members of this body.

Mr. STEVENS. I thank the Senator.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. While the distinguished Senator from Virginia is on the floor, I disagree with the Senator in suggesting that we all ought to enter into some kind of an agreement with the White House as to what the criteria ought to be in applying the line-item veto. I think if we do that, we are further legitimizing what is an illegitimate end run around the Constitution. I'm not for entering into such agreements concerning criteria.

While I have the floor, I am not supporting this measure because it has an item in it that was wrongfully vetoed by the President and because that item is now included in this resolution. I'm supporting it because I think the administration was arbitrary and capricious in exercising the line-item veto

in the way it used it. That is why I have said that Senators can vote for this resolution even though they support the line-item veto. A vote for this resolution doesn't mean they support the line-item veto, nor does it mean they are against the line-item veto.

It says that Senators believe that the administration, in applying the line-item veto, acted capriciously, acted arbitrarily, acted without justification, acted without a credible basis. That is what Senators are voting on. That is why I hope they will all vote for the resolution.

May I say to the distinguished Senator from Virginia, don't count me in when it comes to helping the administration to establish criteria by which it will apply this infernal, nefarious line-item veto.

Mr. ROBB. Mr. President, I simply acknowledge that no one has been more eloquent or consistent in their position that this is not appropriate legislation. From the very time that I entered this body I have known that the distinguished Senator, who was then chairman of the Appropriations Committee, felt that this was not a proper allocation of power under the Constitution, that it should be reserved for the legislative body. It was not appropriate to give this to the executive branch.

We have a disagreement on that matter in terms of the distribution of power, but as to the interpretation of the Constitution, I suspect that the Court will probably ultimately verify or validate the distinguished Senator's views and this debate may be moot.

My concern today, and I accept the Senator's view that nothing in West Virginia is included, but I am concerned if there were 69 of us, if that indeed is the count, who were willing to vote for the line-item veto and now come back simply because there is an item in our States and say we are against it because it happened to gore the ox in our pasture, then we are not maintaining the kind of principle that most Members of this legislative branch believe in in all the other dealings they take part in.

Mr. BYRD. Mr. President, I am not willing to assume that the President has a monopoly on wisdom. I have represented the people of West Virginia now for 51 years in one office or another. I think I have a pretty good idea of what they need, what they want, and so on.

But in this particular instance, the item that was vetoed for West Virginia was on the Department of Defense's 5-year plan.

He vetoed the item that would have been in West Virginia, and I say, let's give it right back to him by his own criteria. He made a mistake in vetoing it. I say let's put it right back on the President's desk, let him exercise his constitutional veto, and then let the Congress exercise its constitutional option of either overriding that veto or sustaining it.

I have sat right here and listened to three former Governors talk about the line-item veto. What is beyond my comprehension is how Senators can confuse the so-called line-item veto at the State level with the line-item veto at the Federal level. They are two different spheres of action. The distinguished Senator from Florida, the distinguished Senator from Virginia, and the distinguished Senator from Arkansas, all three of whom are former Governors, came from States that have the line-item veto. Well, so what? As Governors, they were acting under the constitutions of the State of Virginia, the State of Florida, and the State of Arkansas. But now they are operating under the aegis of the United States Constitution. They are two different things. I don't find the constitution of the State of Virginia written into the U.S. Constitution. I don't find the constitution of the State of Florida written into the U.S. Constitution. The U.S. Constitution refers to legislative powers "vested in a Congress of the United States."

Mr. ROBB. Will the Senator yield on that point?

Mr. BYRD. Yes.

Mr. ROBB. With all due respect to the distinguished senior Senator from West Virginia, that is the reason that we are proposing, proposed, and have effected the line-item veto, and propose it as a constitutional amendment, recognizing that the Constitution of the United States did not grant this power to the President that it grants to 40-some Governors and their respective States.

Mr. BYRD. We are talking about two different powers. We are talking about the powers that the 47 Governors have, dealing with the so-called line-item veto. Those are powers under their State constitutions. But the Senator from Virginia is no longer a Governor; he is a Senator. The Senator from Florida is not a Governor any longer, and he is not to be governed in his actions here by the constitution of the State of Florida; he is to be governed here by the oath he took to support and defend the U.S. Constitution—not the constitution of the State of West Virginia, not the constitution of the State of Virginia, but the United States Constitution. That is the Constitution by which we are governed here.

The line of demarcation, the line of separation of powers, the line of checks and balances is more strictly delineated at the Federal level. It is more strictly drawn, more finely drawn at the Federal level than it is at the State level.

Mr. ROBB. Will the Senator yield further?

Mr. BYRD. Yes.

Mr. ROBB. Mr. President, without the power to amend, this Senator will observe that we would not have had the Bill of Rights, much less the other amendments to the Constitution. So there is a procedure that is set forth for subsequent generations to recon-

sider the wisdom of the Founding Fathers, and it appears that the Founding Fathers accepted the fact that there might have to be some changes even in their seminal document, the Constitution.

I don't intend to continue the debate, Mr. President, with the distinguished senior Senator from West Virginia. I understand his point of view. I respect him and I respect him for it. I expect that this particular bill will probably achieve something in excess of 95 votes. So I am not sure that we need to protract the debate on this particular issue.

Mr. BYRD. Mr. President, I don't intend to protract the debate. But I agree that if this is going to be done, if we are going to have the line-item veto, let it be done the way the framers provided that it be done; namely, through an amendment to the U.S. Constitution, not by statute. I don't think we can do it by law. I do hope that the High Court of the United States will uphold the contention that I am making and will strike this infernal and nefarious law dead, dead, dead!

I thank the distinguished Senator. How much time does the Senator from New Mexico need?

Mr. BINGAMAN. I will ask for 5 minutes.

Mr. BYRD. I yield the Senator 5 minutes. I believe the Senator from New York wants 5 minutes also, and I will yield him that time when he comes in.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, let me talk separately about two issues. One is this Senate resolution disapproving the cancellations that were transmitted by the President resulting in this S. 1292.

Let me first indicate the reasons that I support the resolution, and then I will say a few things about the line-item veto issue, the larger issue that the Senator and others have been discussing here. First, I do support the legislation, S. 1292, for the simple reason that I believe the administration acted to cancel worthy projects on the basis of erroneous information and that it is our duty in the Congress to override that decision if we have the votes to do that. The administration has admitted as much to us in a statement that we received today, and the President continues to insist that he will not allow the passage of this resolution to be signed into law.

At a minimum, I believe that if this override effort proves unsuccessful, the administration owes it to the military personnel in the country and to their families and to those of us in Congress to ensure that there is funding provided for the projects that were incorrectly included in the President's line-item veto package. The Senate received a statement from the administration today indicating that some military construction projects that the President vetoed were canceled on the basis of erroneous information. Mr.

President, that is exactly what happened on the two projects that I am most familiar with, the two in New Mexico. The project at Kirtland Air Force Base and White Sands Range.

In both of those cases, we had information from the Department of Defense indicating that those projects had been substantially designed, and they were ready to be executed in this fiscal year, and as such, they did not meet this criteria that the President has indicated he used and the Office of Management and Budget used in deciding which items to line-item veto.

In fact, I had a conversation with Franklin Raines, head of the Office of Management and Budget, on the day that the decision was announced by the President, and I discussed with him the information we have received from the Department of Defense and how it conflicted with the information that he had which he was urging the President to use in making the decision.

So I am persuaded that the decision as to those two projects was based on erroneous information. I believe, based on what the President has indicated in his letter to us, that the decisions on many other projects were also based on erroneous information. So I believe it is in our best interest and it is our duty, in fact, to go ahead and pass this legislation. I intend to vote for it.

Let me say a couple words about the line-item veto itself. I am not one who supported the line-item veto legislation. I opposed it for many of the reasons that the Senator from West Virginia has articulated so well here on the Senate floor. First of all, I don't believe it is good policy. I think the Founding Fathers had it right when they determined that this was not a power that should be granted to the President, and so I support the basic structure that was put into our Constitution.

Second, if we were going to try to enact some type of line-item veto and grant that authority to the President, it cannot be done by statute; we would have to amend the Constitution. We would have to go through the very elaborate procedure set up in the Constitution to amend the Constitution. Clearly, that was not done in this legislation.

Let me also say that all the debate over the last several years in the Congress about the line-item veto has been an effort to describe it as something which was needed in order to impose fiscal responsibility on the Government. My experience here in the Congress has led me to conclude that fiscal irresponsibility is just as much a result of action in the executive branch as it is a result of action here in the Congress. There are many instances where those of us in Congress are fiscally irresponsible. I have witnessed that on many occasions. But I have also witnessed many examples where the executive branch and the President in the budget sent to the Congress were also fiscally irresponsible. So I don't think

the case has been made that fiscal irresponsibility is just a province of the Congress.

I do believe we should pass this resolution. I believe that the Supreme Court, when it gets the opportunity, will declare the legislation that enacts the line-item veto to be unconstitutional. I believe the issue will be back before us at that time to see whether we want to do a constitutional amendment. I will urge my colleagues not to do a constitutional amendment at that time.

I yield the floor, Mr. President. I appreciate the time.

Mr. STEVENS. How much time remains, Mr. President?

The PRESIDING OFFICER. The majority has 12 minutes 37 seconds, plus 10 minutes to close, which has been allocated separately. The minority has used up all their time, but they still have 10 minutes to close.

Mr. STEVENS. I yield such time to the Senator from Texas, from my 12 minutes, as she wishes to use.

Mrs. HUTCHISON. Mr. President, I ask that I be notified if I go over 5 minutes, which I don't expect to do.

Mr. President, I appreciate Senator STEVENS' putting this bill forward, along with Senator BURNS, because I think this is exactly the way the process should work. I am, frankly, puzzled by some of my colleagues who are arguing that they aren't going to vote for this bill because they voted for the line-item veto. I voted for the line-item veto. This is exactly the way the process should work. The President vetoes, and the Congress does not take away its right to disagree with the President. The Congress has not taken away its right to override. In fact, that is part of the process. That is the way it is supposed to work.

I don't accuse the President of partisanship. I think he has vetoed projects that he probably considers were not worthy in States and districts represented by Republicans and Democrats. But I do think the President is wrong. I think the President did not have the facts straight, and I think he has vetoed essential projects that the military has asked for, and I think we need to override this veto. In fact, the President vetoed these measures that are operational. Let me just read you a couple of examples: A repair of the launch facilities for missile systems in White Sands, NM; to expand ammunition supply facilities at Fort Bliss; consolidation of B-1B squadron operations facilities.

These are projects the military has said are essential. They are in the military 5-year plan. The reason they weren't in the President's budget is because the President always comes in below Congress in the military budget. Congress believes the military has certain needs for our readiness, and Congress has increased the President's budget every year since I have been here. So it is not unusual that the President would not have in his budget

some of the needs that Congress believes are essential. In fact, the President left in many military construction projects at NATO facilities that are exactly the same type of facilities that he vetoed on American bases.

So I think this is exactly the kind of override that the process calls for. The President did not have his facts. The Department of Defense admits that their data was not up to date. The military asked for these projects. They are very important for readiness. And I think it is time for us to exercise our rights as Congress to override the President's veto, not because we think he was sinister in what he was trying to do but because we think he was wrong.

It is Congress' prerogative to do this. I think it is important that we stand by the needs for the military that we have studied and that we believe are necessary, and that we stand by what we did and override the President's veto.

Thank you, Mr. President.

I yield the floor.

Mr. STEVENS. Mr. President, I will yield to the Senator from New York when he comes. I know he wants to make a statement.

But the Senator from Texas has just made the point that I have been trying to make. This is the process of the Line-Item Veto Act. It is the first time we have attempted to use it. This is the override mechanism that is provided by that act, and it was provided by Congress because mistakes could be made. In this instance we now know that mistakes were made.

The statement came to us today from the Office of Management and Budget that admits there was erroneous material given to the President on which they matched against the criteria that they had used under the Line-Item Veto Act to determine whether any projects should be eliminated. We asked for the list of those projects.

My staff tells me we still have not received the ones that mistakes were made on. We have no alternative under the circumstances than to include them all. There are two here that are not included because of the specific requests of the States involved not to have their projects involved. But the administration has now clearly said on the record that there were mistakes made.

The veto message, as I said, violates the spirit and intent of the balanced budget amendment.

That again is why the override mechanism is in the act. This action taken by the administration does not comply with the act. We have a way of saying to the Presidency we intended that money be spent, and we want it spent for these projects.

Let's look at this criteria again that the administration used.

It set forth three criteria, one of which was that the project had to be in the President's budget by definition. In this instance, that was an erroneous

criteria because the Presidency had agreed to increase the amount of money that was in the President's budget for defense by \$2.6 billion. In the budget agreement that was worked out with leadership. Of that \$2.6 billion, \$800 million of that was allocated to military construction. Nothing came forward from the administration that indicated that it had any desire to decide where that money went.

So our committee allocated the money. In allocating it, we gave money to these 38 projects. Our criteria was they had to be projects that the military supported. We had a hearing after the line-item veto took place. At that hearing the military witnesses stated that every project on the list was supported by the Department of Defense military people. They were essential to the program. And I believe all but five were in the long-range program. The other five were covered by changes in circumstances since the long-range 5-year program was devised. But they were specifically supported by the military witnesses.

The criteria that the Presidency used to determine whether to apply the line-item veto does not stand up to the scrutiny of this Congress.

I am corrected about one thing. One of the criteria was that no design work had been done. The impact of that is that again there were projects where the information was erroneous that was received by the White House. These projects were in fact underway and could be completed in the next fiscal year.

I thank you for telling me about that.

But the problem of the criteria is they were not designed to find projects that were wasteful, or would increase the deficit.

In this instance, I failed to point out that since we obtained the increase in money allocated to our committee for defense we looked into the long-range program, and we brought up into the 1998 year years that are in the long-range program but were specified to commence at a later time. We did that because some money had already been allocated to those projects by the Department of Defense, and those projects could be more efficiently completed if money was available this year.

My point is these are not wasteful projects. No one can claim that there any one of these projects that meets the criteria of the Line-Item Veto Act will increase the deficit. By definition they are within this budget. They are within the amount that the administration agreed could be spent this year for defense. And, second, they are not by definition wasteful.

Those are the two criteria of the Line-Item Veto Act. The President can use the Line-Item Veto Act to eliminate wasteful projects, or projects that would increase the deficit. Neither apply to any one of the 38 projects.

Under the circumstances, Mr. President, having allocated \$800 million to

military construction, what we find now, as I said just a little while ago, is a line-item veto eliminates \$287 million from the \$800 million which was part of the \$2.6 billion overall increase for defense. The line-item veto eliminated 35 percent of the money we put into projects to use the increased amount which was available for military construction. That means right now that if the administration goes forward with what is stated in this announcement today from OMB that Senator BYRD has read, they will reprogram money from other projects that have already been approved by the Presidency and move it over to the 18 in which the mistakes were made.

What does that do to the rest of the budget? It means that we are paying twice. We have lost the \$287 million, if this bill does not pass. And, in addition to that, they are going to take somewhere in the vicinity of \$175 million. We believe it will be \$450 million not spent for needed projects, if this bill is not passed.

Mr. President, this is the mechanism. That is why I say I will support and, as a matter of fact, introduce a bill to repeal the act, if this mechanism doesn't work. If there is any example where it should work, it is this one. It is admitted that there are 18 projects on which they made mistakes. They refused to tell us which ones.

I don't know how to handle this when people say you can't do this because this violates the spirit of the Line-Item Veto Act. This is the spirit of the Line-Item Veto Act. And I urge Senators who supported the line-item veto to consider that. If this mechanism is ever to work, this is the point where it should work. If it won't work in this one there is no reason to support this act anymore, in my opinion, because this is really the worst example I could think of a situation where information provided to the President leads the President to line-item veto items that were eliminated by mistake.

Another avenue, of course, is for this to go to court. If it goes to court, and the court finds in the final analysis that the line-item veto is unconstitutional, which is what my good friend from West Virginia says, then the money will be restored thereto.

But let's see if the mechanism works. There are already some court challenges. I don't see any reason to have another court challenge to the Line-Item Veto Act. The Senate and the House ought to do its duty on this and the duty is to try to remedy the mistake that was made when the line-item veto was wrongfully exercised in connection with these 38 projects.

Mr. President, I don't see anyone else seeking time.

I ask how much time remains?

The PRESIDING OFFICER. There are 10 minutes for the majority, and there are 10 minutes remaining for the minority prior to the vote.

Mr. STEVENS. I yield the floor.

Mr. BYRD. Mr. President, Senator SARBANES, the distinguished senior

Senator from Maryland, is coming to the floor and he wants 5 minutes. I wish to have the Chair alert me when I have remaining 5 minutes. In the meantime, may I address a question to the distinguished Senator from Alaska?

In the statement of administration policy, we are told, and I quote, "The administration strongly opposes this disapproval bill."

Well, if I understand it, the administration is willing to work with the Congress in restoring half of these items; half of the items. I cannot understand how it can disapprove the bill when it is willing to restore half of the items that are in the disapproval bill.

Also, the statement of administration policy that comes from the Office of Management and Budget says, "The President's action saves \$287 million in budget authority in 1998."

In the very next sentence, it says, " * * * we are committed to working with Congress to restore funding for those projects that were canceled as a result of the data provided by the Department of Defense that was out of date."

How much is the President's action really saving? He claims to save \$287 million by virtue of the exercise of the line-item veto. But he follows in the next sentence, and says, " * * * we are committed to working with Congress to restore funding * * * "

How much really can the administration claim to have saved?

Mr. STEVENS. It would be very hard, Mr. President, to figure out the net amount. The actual savings would be determined by how much of the projects fall into this year by reprogramming and then how much more money has to be requested next year to pay for the money that is spent for the projects that had been delayed because of the transfer of the money to these projects. I believe that the net will be that there will be \$450 million less this year. But I do believe it will increase the cost of defense in later years because of the fact that these projects have been deferred and other projects will be deferred in order to pay for the 18 according to that document.

Mr. BYRD. I thank the distinguished Senator.

I yield the floor.

Mr. STEVENS. Mr. President, I suggest the absence of a quorum, and I ask that it be charged equally to both sides; charge the first 2 minutes to mine, and then bring it down.

I suggest the absence of a quorum.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. STEVENS. Mr. President, I have time remaining. I yield to the Senator

from New York such time as he wishes, and I reserve the remainder of the time to be equally divided between the Senator from West Virginia and myself.

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

The Senator from New York.

Mr. MOYNIHAN. Mr. President, I would very much like to thank the senior Senator from Alaska, the Chairman, for the graciousness with which he has yielded to me. I will not take long.

I want to acknowledge that I am a cosponsor of this legislation. And in the interest of full disclosure, I will say there are two small projects in New York State that would be affected. But the proposition to be addressed once again, as the senior Senator from West Virginia has said, is that the Line Item Veto Act is unconstitutional, and we are already beginning to see the constitutional consequences, the extraordinary increase in the power of the Presidency as against the legislature that is implicit in the newly enhanced bargaining position of the President.

If you want to change this power, which is very carefully set forth in article I of the Constitution, then amend the Constitution. But, Senators, listen to Senator BYRD. Listen, if I might just presume to say, to Justice John Paul Stevens. In the course of our challenge, which reached the Supreme Court last June, the Justices simply said, well, they don't have standing. However, in a powerful dissent, Justice Stevens, who was the only Justice to comment directly on the merits of the case, said they surely do have standing. He wrote of the Act:

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 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.

Again, Justice Stevens said, not only do they have standing but the measure is unconstitutional. Two Federal judges have spoken to this issue: Judge Thomas Penfield Jackson of the U.S. District Court for the District of Columbia—who took just 3 weeks from having heard the case to declare it unconstitutional—and then Justice Stevens.

I can report that three new constitutional challenges have recently been filed and now consolidated, I believe is the term, in the District Court, and we will hear from the Supreme Court before this term is out, I should think.

But in the first instance remember that the large issue here is that of the

Constitution. We take an oath to uphold and defend the Constitution of the United States against all enemies, foreign and domestic. I had never thought, Mr. President, when I first took that oath that there were any "domestic" enemies to the Constitution, but now as I look about us, I recall that celebrated immortal line from Pogo: "We have met the enemy and he is us."

Now, there will be time to overcome that. For the moment I simply wish to thank the Senator from Alaska, the distinguished chairman, for an opportunity to express my view on this subject.

I yield the floor.

The PRESIDING OFFICER. Each manager has 4½ minutes remaining.

Mr. BYRD. Each side has 4½ minutes.

Mr. SARBANES. Could I get 3 minutes?

Mr. BYRD. Mr. President, I yield 5 minutes. That will leave how much time?

Mr. STEVENS. Two minutes to each side.

Mr. BYRD. Two minutes to each side.

The PRESIDING OFFICER. The Senator is correct. The Senator from Maryland is recognized.

Mr. SARBANES. Mr. President, I rise in very strong support of the pending measure overriding the line-item vetoes of the military construction appropriations bill.

During last year's debate on the line-item veto legislation, I spoke at length—and I do not intend to do that again today—on how giving that authority to the President would strike a major blow against the intricate, carefully conceived system of checks and balances that the Framers of the Constitution crafted over 200 years ago and that has stood the Nation in such good stead ever since.

With the line-item veto authority, the President needs only one-third plus one of either House of Congress, not even both Houses of Congress but either House, to negate legislation that the Congress has passed and the President has signed—I repeat, legislation that the Congress has passed and the President has signed. Then, after that process, the President can go back in and pull out those items he wants to cancel.

In my view, giving such authority to the President cannot be done by statute, and I believe that the measure we passed last year is constitutionally deficient. I trust when it is finally determined by the courts they will agree. In the meantime, of course, we have to deal with the legislation.

Furthermore, I simply want to point out that as a matter of policy, the line-item veto gives the Executive extraordinary power to determine the priorities of the Nation and to use that power, if he chooses to do so, to pressure Members of Congress on a whole range of other legislative issues. In other words, the Member is told, well, here is this item in this bill that is

very important to your State, but on other matters on which I need your support—nominations, treaties, you name it.

A Member of Congress is then under tremendous pressure to support the President's priorities. That is clearly not the arrangement the Founding Fathers envisioned when they established a system based on a sharing of policy-making authority between the legislative and the executive branches of Government.

The Congress of the United States is distinguished amongst legislative branches in the world because it has some real measure of power and authority. This line-item veto approach is, in my judgment, well on its way to eroding that status.

Some asserted during last year's debate that the line-item veto was necessary as a deficit-reduction mechanism. The response from many of us was that to reduce the deficit the Congress need only make the right budget decisions, which in fact we have done as demonstrated by the dramatic decline in the budget deficit.

I am sure that many of my colleagues who voted for the line-item veto last year are having second thoughts after having seen it in action. In fact, the President's use of the line-item veto here does not even track the criteria which the executive branch itself said it was going to use in applying it.

I welcome this opportunity to join in the effort to undo the President's use of that authority. However, my colleagues should realize that as long as this legislation remains on the books, we will be back here time and time again waging an uphill battle against the Chief Executive seeking to impose his set of priorities on the Congress and the Nation.

Mr. President, I yield the floor. I yield back whatever time remains to the distinguished Senator from West Virginia.

Mr. BYRD. Mr. President, how much time remains?

The PRESIDING OFFICER. Five minutes equally divided.

Mr. BYRD. I thank the Chair, and I thank all Senators who have spoken on this important matter. I thank those who take the position contrary to the position I have taken. I appreciate the opportunity to close the debate on this matter along with my dear friend, the Senator from Alaska [Mr. STEVENS].

Mr. President, Cato, the Elder, lived between the years 234 B.C. and 149 B.C. He was a great Roman statesman, and he once went to Carthage and viewed the operations of the Carthaginians and saw the progress they were making in building a prosperous regime and one that had considerable warmaking power. Cato brought back to the Roman Senate some figs that had grown in Carthage just to demonstrate the fact that Carthage was "not very far away, gentlemen. This is a country you had better keep your eye on. You

had better watch these people. They are growing stronger every day and they don't live very far away, as evidenced by these fresh figs from Carthage."

And, indeed, that great statesman, Cato, the Elder, henceforth closed every speech, every communication, every letter, with the words, "Carthage must be destroyed!" I shall close this speech now and perhaps some future ones with the words, "The line-item veto must be repealed!"

I yield the floor.

Mr. STEVENS. Mr. President, it is always a pleasure to be in the Chamber with the Senator from West Virginia. But mine is a more mundane task right now, and that is to try to get the Senate to understand that this is the process provided by the Line-Item Veto Act. If it is not followed, the defense budget per se and the military construction budget in general will be lowered. If we pass this act and it becomes law, the President still has control over these projects. He has already reprogrammed money for military projects for Bosnia. Next spring we will face another problem of paying for Bosnia. But should we let \$450 million go astray here now because of mistakes? I regret that the mistakes were made, but I hope the Senate doesn't make another one. This bill should be overwhelmingly passed to tell the Presidency the line-item veto is a very discrete mechanism and it must be used with care. Above all, its use cannot be based on mistakes.

I ask for the yeas and nays if they have not been ordered.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass? On this question, the yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Indiana [Mr. COATS] is necessarily absent.

The result was announced—yeas 69, nays 30, as follows:

[Rollcall Vote No. 287 Leg.]

YEAS—69

Akaka	Collins	Gregg
Allard	Coverdell	Hagel
Baucus	Craig	Harkin
Bennett	D'Amato	Hatch
Biden	DeWine	Helms
Bingaman	Domenici	Hutchison
Bond	Dorgan	Inhofe
Boxer	Enzi	Inouye
Brownback	Faircloth	Jeffords
Burns	Feinstein	Kempthorne
Byrd	Ford	Kennedy
Campbell	Frist	Lautenberg
Chafee	Glenn	Leahy
Cleland	Gorton	Levin
Cochran	Graham	Lott

Lugar
Mack
McConnell
Mikulski
Moseley-Braun
Moynihan
Murkowski
Murray

Reed
Reid
Roberts
Rockefeller
Roth
Santorum
Sarbanes
Shelby

Smith (NH)
Smith (OR)
Snowe
Specter
Stevens
Thompson
Torricelli
Warner

NAYS—30

Abraham
Ashcroft
Breaux
Bryan
Bumpers
Conrad
Daschle
Dodd
Durbin
Feingold

Gramm
Grams
Grassley
Hollings
Hutchinson
Johnson
Kerrey
Kerry
Kohl
Kyl

Landrieu
Lieberman
McCain
Nickles
Robb
Sessions
Thomas
Thurmond
Wellstone
Wyden

NOT VOTING—1

Coats

The bill (S. 1292) was passed, as follows:

S. 1292

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress disapproves of cancellations 97-4, 97-5, 97-6, 97-7, 97-8, 97-9, 97-10, 97-11, 97-12, 97-13, 97-14, 97-15, 97-16, 97-17, 97-18, 97-19, 97-20, 97-21, 97-22, 97-23, 97-24, 97-25, 97-26, 97-27, 97-28, 97-29, 97-30, 97-32, 97-33, 97-34, 97-35, 97-36, 97-37, 97-38, 97-39, and 97-40, as transmitted by the President in a special message on October 6, 1997, regarding Public Law 105-45.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The majority leader.

ORDER OF PROCEDURE

Mr. LOTT. Mr. President, for the information of all Senators, we will not have any further votes tonight. That was the last vote of the night. We do have additional business we are going to do tonight, and we will have somewhere between two and five votes tomorrow morning. I will work with Senator DASCHLE on the timing of those votes, and we will try to get them all in before the noon hour, which is what we have always said we will try to do on Fridays. We may have fewer than that number of votes, but I think a minimum of two. We could have more than that as we deal with procedural motions with regard to the Department of Defense authorization conference report.

I thank Senator DASCHLE for his efforts to work with us on a number of issues, a number of bills that we think we may be able to get some agreement on or get an understanding of how we will proceed. I particularly thank him for his efforts and for the efforts of Senator HARKIN with regard to the Federal Reserve nominees. Therefore, I have a unanimous consent request to make now.

EXECUTIVE SESSION

NOMINATIONS OF EDWARD M. GRAMLICH, OF VIRGINIA, AND ROGER WALTON FERGUSON, OF MASSACHUSETTS, TO BE MEMBERS OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Mr. LOTT. Mr. President, I ask unanimous consent that the Senate now proceed to executive session to consider Executive Calendar Nos. 305 and 306. I further ask unanimous consent that the time on the nominations be limited as follows:

Senator HARKIN in control of 90 minutes;

Senator D'AMATO in control of 30 minutes.

I further ask unanimous consent that immediately following the expiration or yielding back of time, the Senate proceed to vote on the confirmation of each of these nominations; that following the two votes, the President be immediately notified of the Senate's action; and that the Senate then return to legislative session. I understand there will not be a necessity for rollcall votes on these nominees.

The PRESIDING OFFICER. Is there objection?

Mr. DASCHLE. Reserving the right to object, and I will do so only to publicly acknowledge the cooperation of a number of Senators, in particular Senator HARKIN. This has been a matter of great import to him. He has been able to work with us to reach this agreement. He is not on the floor at the moment, but he will be soon. I thank Senator HARKIN and a number of other Senators who have expressed concern.

I am very hopeful, as a result of this agreement, we can finish work on these two important nominations as well.

I thank the majority leader. And I have no objection.

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

Mr. LOTT. Mr. President, while we wait on the Senators to come to the floor, and so that we can discuss other matters, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

The clerk will report the two nominations.

The bill clerk read the nominations of Edward M. Gramlich, of Virginia, to be a member of the Board of Governors of the Federal Reserve System, and Roger Walton Ferguson, of Massachusetts, to be a member of the Board of Governors of the Federal Reserve System.

Mr. ROBERTS. Mr. President, I suggest the absence of a quorum.