

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 99, nays 0, as follows:

[Rollcall Vote No. 1 Ex.]

YEAS—99

Abraham	Faircloth	Lieberman
Akaka	Feingold	Lott
Allard	Feinstein	Lugar
Ashcroft	Ford	Mack
Baucus	Frist	McCain
Bennett	Glenn	McConnell
Biden	Gorton	Mikulski
Bingaman	Graham	Moseley-Braun
Bond	Gramm	Moynihan
Boxer	Grams	Murkowski
Breaux	Grassley	Murray
Brownback	Gregg	Nickles
Bryan	Hagel	Reed
Bumpers	Harkin	Reid
Burns	Hatch	Robb
Byrd	Helms	Roberts
Campbell	Hollings	Roth
Chafee	Hutchinson	Santorum
Cleland	Hutchison	Sarbanes
Coats	Inhofe	Sessions
Cochran	Inouye	Shelby
Collins	Jeffords	Smith Bob
Conrad	Johnson	Smith Gordon H
Coverdell	Kempthorne	Snowe
Craig	Kennedy	Specter
D'Amato	Kerrey	Stevens
Daschle	Kerry	Thomas
DeWine	Kohl	Thompson
Dodd	Kyl	Thurmond
Domenici	Landrieu	Torricelli
Dorgan	Lautenberg	Warner
Durbin	Leahy	Wellstone
Enzi	Levin	Wyden

NOT VOTING—1

Rockefeller

The nomination was confirmed.

Mr. HELMS. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will resume legislative session.

The Chair suggests the absence of a quorum. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

ANOTHER RECORD FOR ROBERT C. BYRD

Mr. LOTT. Mr. President, so far, January has been quite a month for our highly esteemed colleague, the senior Senator from West Virginia. On January 8, Senator ROBERT C. BYRD observed the 50th anniversary of the day he entered public service as a member of the West Virginia House of Delegates.

To commemorate this significant event, Senator BYRD returned to the West Virginia State capitol on January 11 to join hundreds of grateful West Virginians and other friends in the unveiling of a bronze statue.

This likeness of Senator BYRD, prominently placed in the capitol's ro-

tunda, will serve to remind future generations of his service to his State and to his country.

Just 2 days after the Charleston, WV, ceremony, ROBERT BYRD achieved another major distinction. On January 13, 1997, he became the fourth longest serving U.S. Senator in the history of our republic, with a service record of 38 years and 10 days.

Think of it, Mr. President. Of the 1,843 past and present senators, only three have served longer than ROBERT C. BYRD. In another 3 years, SENATOR BYRD will exceed the 41-year service record of my immediate predecessor from Mississippi, John C. Stennis.

After that, Senator BYRD's only challengers will be the current record holder, Carl Hayden of Arizona—41 years and 10 months, and the current second longest serving member, our highly regarded colleague from South Carolina, STROM THURMOND.

I shall have more to say about Senator THURMOND in May of this year, when he breaks Senator Hayden's record.

Each of us in this body, from the most junior to the most seasoned, would do well to pay close attention to ROBERT C. BYRD—a man of great historical knowledge. When ROBERT C. BYRD speaks about the role of the Senate in American Government, he deserves our most careful attention.

On behalf of all Senators, I commend Senator BYRD for his long service to our country.

(Applause, Senators rising.)

ORDER OF PROCEDURE

Mr. LOTT. Mr. President, momentarily, we hope to propound a unanimous-consent agreement about the time and how we will handle the nomination of our colleague, former Senator Bill Cohen. We are working on the final preparation and notification on that, and then we will ask for an agreement at that time.

AUTHORIZING SENATE LEGAL COUNSEL REPRESENTATION

Mr. LOTT. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Senate Resolution 21, submitted earlier today by myself and Senator DASCHLE.

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

The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 21) to direct the Senate legal counsel to appear as amicus curiae in the name of the Senate in *Sen. Robert C. BYRD, et al. v. Franklin D. Raines, et al.*

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

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

Mr. LOTT. Mr. President, the resolution directs the Senate legal counsel to appear as amicus curiae, as friend of the court, in the name of the Senate in

a case pending in the United States District Court for the District of Columbia, and ask for its immediate consideration.

Mr. President, on April 9, 1996, President Clinton signed into law the Line Item Veto Act. This act was the product of years of legislative consideration and much protracted debate.

Beginning January 1 of this year and through the year 2004, the Line Item Veto Act provides the President with the authority, under a set of carefully circumscribed limitations, to cancel particular items of appropriation, direct spending or limited tax benefit in any bill.

The President must report any such cancellation to Congress by special message within 5 days after his approval of the bill containing such spending or tax provisions. Congress then has the opportunity to decide whether to pass a law disapproving the President's cancellation and mandating the spending or tax benefit.

As I have stated, this Act was passed after much consideration and debate understanding the potential Constitutional implications. In the end, Congress determined to empower the President in this manner in recognition of the fact that strong tools are necessary if we are to achieve our goal of finally getting the Federal budget in balance.

Mr. President, the distinguished Senator from West Virginia, Mr. BYRD, and three other of our colleagues, the former senior Senator from Oregon, Mr. Hatfield, the senior Senator from Michigan, Mr. LEVIN, and the senior Senator from New York, Mr. MOYNIHAN, joined by two Members of the House of Representatives, have filed an action in the United States District Court for the District of Columbia challenging the constitutionality of the act. They assert in their lawsuit that the act violates the lawmaking provisions of article I of the Constitution by authorizing the President to nullify the effect of portions of recently enacted laws.

The lawsuit at issue was commenced pursuant to a special judicial review provision, section 3 of the act, authorizing the filing of an action by any Member of Congress to seek declaratory or injunctive relief on the ground that the act violates the Constitution.

This judicial review provision also gives each House of Congress the right to intervene in the suit in defense of the act. Further, the law provides for direct appeal from any decision of the district court to the Supreme Court and requires both courts to expedite their handling of the action.

The Department of Justice will represent the defendants in the lawsuit, namely the Director of the Office of Management and Budget and the Secretary of the Treasury. As such, there appears to be no need for the Senate to intervene formally in the suit as a party defendant.

Nonetheless, title VII of the Ethics in Government Act authorizes the Senate

to appear as *amicus curiae*, or friend of the court, in this or any such legal action in which the powers and responsibilities of the Congress under the Constitution are placed in issue.

Mr. President, appearance as *amicus curiae* in this lawsuit would enable the Senate to present to the court its reasons for enacting the Line Item Veto Act and the basis for its position that the law is consistent with the Constitution.

This resolution I offer today will authorize the Senate legal counsel to appear in this case in the name of the Senate as *amicus curiae* to support the constitutionality of the Line Item Veto Act.

The Senate, through the Senate legal counsel, would not take any position on the other issues, such as those related to the constitutional standing of the plaintiffs in the suit to bring the action, and the timeliness, or ripeness, of the issues before the court, that may be considered by the court in the case as such issues are not covered by the explicit terms of the resolution.

Mr. MCCAIN. Mr. President, I rise in strong support of the resolution that is before the Senate.

This resolution directs the Senate legal counsel to appear in the name of the Senate to defend the constitutionality of the Line Item Veto Act, Public Law No. 104-130, 110 Stat. 1200 (1996). While both the Line Item Veto Act and the Ethics in Government Act of 1978 provide authority for the Senate to intervene or appear as *amicus curiae* in legal proceedings, the adoption of a resolution by the Senate is necessary in order to activate participation by legal counsel. By adopting this resolution, we will ensure that the Senate is fully represented in the case of *Sen. Robert C. Byrd, et al. versus Franklin D. Raines, et al.*, which is pending in the U.S. District Court.

The case that has been filed by Senator BYRD, former Senator Hatfield, Senator LEVIN, Senator MOYNIHAN, Representative SKAGGS, and Representative WAXMAN challenges the constitutionality of the Line Item Veto Act on the grounds that it violates article I of the Constitution. I firmly believe that their assertion is false and that the Line Item Veto Act which was passed last year by an overwhelming vote of 69 to 31 is constitutional.

The act passed last year was very carefully drafted to ensure constitutionality. While I would not presume to tell the court how they should rule on this case, I am confident that the Senate legal counsel will present a very compelling argument that proves that Congress does have the authority to delegate this very limited and strictly defined power to the President.

Our \$5 trillion debt, our voracity for spending and our lack of political courage to cut spending led Congress to pass the Line Item Veto Act. Finally, Members of Congress will be forced to defend their pork barrel spending projects publicly. I am hopeful, al-

though not convinced, that the mere threat of a Presidential veto will cause Members of Congress to rethink putting special interest items in appropriations bills like aquaculture centers to study shrimp in landlocked Arizona, bicycle paths, and millions of dollars for pony trekking facilities in Ireland. The time has come to force Congress and the President to take responsibility for how we are spending taxpayers' dollars.

The purpose of the line-item veto is to reduce the deficit by allowing the President to cancel wasteful Congressional spending. Prior to passage of this important Government reform tool, it was easy for Members to slip projects into large appropriations bills or tax bills and not have to be accountable for wasting taxpayers' hard-earned dollars. When these large bills came to the President, often on a deadline, his hands were tied, leaving him with a take-it-or-leave-it decision on the entire bill. In essence, the old system allowed both Members of Congress and the President the ability to blame each other and point fingers without accepting responsibility for these ridiculous projects.

The court challenge launched by a few Members of Congress is simply an effort to continue their battle to preserve the status quo budget process—a budget process that favors seniority and the Appropriations Committee, and one that allows Members to hide wasteful and parochial spending projects in large appropriations bills that previously the President was forced to sign or reject in total. Some of these members support the current process because they directly benefit from it. Last September, the Portland Oregonian reported that since 1980, former Senator Hatfield sent \$3.2 billion home to Oregon. It is simply not fair to allow a disproportionate share of taxpayer dollars to be distributed on the basis of position or committee assignment.

The Line Item Veto Act ends this practice of unaccountable spending by allowing the President to use an enhanced rescission process that builds on the President's current authority under the Impoundment Control Act of 1974. It strengthens the existing rescission authority by placing the onus on Congress to overturn the President's rescissions rather than waiting for Congress to act on rescissions that the President recommends.

History shows the current rescission process simply does not work because it is too easy for Congress to deliberately fail to act. Since 1974 only \$23.7 billion of the \$74 billion in rescissions proposed by Presidents have been adopted. That is just 32 percent—not a very good batting record. It was, after all, our frustration with the current process and the Congress' insatiable appetite for spending that led Congress to cede this limited authority to the President.

Our opponents will attempt to persuade the courts that we have abdi-

cated our constitutional powers by delegating to the President powers that we do not have authority to delegate. There is strong historical evidence in tax and tariff law that proves Congress can delegate this kind of power to the President. The delegation of power is narrowly defined and limited to canceling dollar amounts of discretionary budget authority in an appropriation law, new items of direct spending, or limited tax benefits for the sole purpose of deficit reduction. The statute outlines strict prescriptions for how the President must use this authority and gives Congress an opportunity to overturn the President's cancellation under expedited procedures. All of these limitations on the President's use of this power ensure the constitutionality of this process change.

Despite what the plaintiffs in this case may lead you to believe, I have found nothing in the Constitution that requires the President to spend every dollar that Congress appropriates. Our opponents would like to equate preserving Congress' autonomy to spend taxpayers money with protecting the delicate balance of power of our government. Actually these big spenders are trying to cling to power that has been unfairly tipped in their favor. Since Congress usurped the President's power to impound funds in 1974, it has been Congress that has upset the delicate balance of power in our government system.

Congress' power has been even further expanded by the evolution of a budget process that results in huge appropriations bills, omnibus tax and reconciliation measures as well as passage of continuing resolutions at the last minute just before the fiscal year ends. In addition, this process of passing enormous bills has substantially undercut the current veto power to challenge wasteful spending measures. I doubt our founding fathers could have ever envisioned fathomed legislation totaling hundreds of pages. In their day, an appropriations bill was one page—giving the President a relatively easy choice.

The line item veto finally puts the President on a level playing field with the Congress by giving the President a necessary tool to govern responsibly in light of the how the legislative process has evolved. For over 25 years it has actually been Congress that has quietly undermined our system of checks and balances. Passage of the line item veto was necessary to restore an equilibrium between the executive and legislative branch.

The line item veto in no way alters or violates any of the principles of the Constitution. It preserves wholly the right of the Congress to control our Nation's purse strings—a trust I might add the Congress has often violated. The law as crafted does nothing more than embrace the Constitutional tenet to give the President functional veto power. I am confident that the court will look at this new authority in light

of the historical evidence and court precedent and find that it is fully constitutional.

I do not believe it is necessary to engage in a lengthy discussion about the line item veto since the Senate has already debated this subject vigorously and I believe the record speaks for itself. I would, however, like to remind the Senate that two former solicitors general—one Democrat and one Republican—testified before Congress that the law is fully constitutional. The American Law Division of the Congressional Research Service reviewed the law and asserted “nothing in delegation doctrine suggests that Congress may not delegate powers . . .” And the Justice Department reviewed the legislation before the President signed the bill and determined it was constitutional.

In closing, let me say, I look forward to working with the President to help him identify spending and tax provisions that he should cancel. I hope that President Clinton has the political courage to exercise this authority diligently and will not bow to the prolific spenders in Congress, thus squandering this historic opportunity. The American people have waited for this for over 120 years. Let us not disappoint them.

Mr. LOTT. Mr. President, I ask unanimous consent that the resolution be agreed to, the motion to reconsider be laid upon the table, and that any statements relating to the resolution appear at the appropriate place in the RECORD.

Before the Chair's ruling, for the information of all Senators, this is a resolution that allows the Senate legal counsel to file a brief on behalf of the Senate with regard to support for the line-item veto.

The PRESIDING OFFICER. Without objection, the resolution and its preamble are agreed to.

The resolution (S. Res. 21) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. RES. 21

Whereas, in the case of *Sen. Robert C. Byrd, et al. v. Franklin D. Raines, et al.*, C.A. No. 97-0001, pending in the United States District Court for the District of Columbia, the constitutionality of the Line Item Veto Act (Public Law 104-130; 110 Stat. 1200), has been placed in issue;

Whereas, pursuant to sections 703(c), 706(a), and 713(a) of the Ethics in Government Act of 1978 (2 U.S.C. 288b(c), 288e(a), 288l(a)), the Senate may direct its counsel to appear as amicus curiae in the name of the Senate in any legal action in which the powers and responsibilities of Congress under the Constitution are placed in issue: Now, therefore, be it

Resolved, That the Senate Legal Counsel is directed to appear as amicus curiae on behalf of the Senate in the case of *Sen. Robert C. Byrd, et al. v. Franklin D. Raines, et al.*, to defend the constitutionality of the Line Item Veto Act.

EXECUTIVE SESSION

Mr. LOTT. Mr. President, I ask unanimous consent that the Senate now re-

turn to executive session to consider the nomination of William Cohen, to be Secretary of Defense, and that the time on the nomination be limited to 20 minutes under the control of the chairman, Senator THURMOND, and 15 minutes under the control of the ranking member, Senator LEVIN, and following the conclusion or yielding back of the time, the Senate proceed to vote on the confirmation of Senator Cohen.

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

NOMINATION OF WILLIAM COHEN OF MAINE TO BE SECRETARY OF DEFENSE OF THE UNITED STATES

The legislative clerk read the nomination of William Cohen of Maine to be Secretary of Defense of the United States.

Mr. LOTT. Mr. President, I have just one bit of clarification. We had hoped to have a full discussion of support for Senator Cohen on Thursday. But we do have the wake and funeral of our former colleague, Senator Tsongas. We are trying to accommodate Senators who need to leave this afternoon to go up to Massachusetts for the wake and for other commitments that were made tonight. We needed to go ahead and get this done today because Senators would not get back until late tomorrow afternoon. I apologize to Senators who may not have as much time as they wanted. I encourage those Senators to stay after the vote to speak on this, if they wish.

So for the information of all Senators, another vote is expected on the confirmation of our former colleague, Senator Cohen, at approximately 3:25 p.m. today.

Following that confirmation vote, there will be an additional period for morning business in which to introduce bills and make statements. However, there will be no further rollcall votes today. The next opportunity the Senate will have for votes, at this point, looks like Tuesday of next week. But we will further confirm that when we do our closing statement later today.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. Mr. President, I yield myself 2½ minutes.

I want to thank the majority leader, Senator LOTT, and the minority leader, Senator DASCHLE, for taking up the nomination of our former colleague Senator Bill Cohen to be Secretary of Defense. As all Senators know, Secretary Perry, who has ably led the Department of Defense for the past 3 years, has departed. It is therefore essential that we fill the position of Secretary of Defense as quickly as possible.

The Armed Services Committee met this afternoon in an executive session and unanimously voted to recommend the confirmation of Senator Cohen as the 20th Secretary of Defense. Senator

Cohen is well known by all Members of the Senate for his distinguished 18 years of service in the Senate representing the people of Maine. Each of us is aware of his character, ability, and dedication to providing unquestioned support for our men and women in uniform. Senator Cohen has repeatedly demonstrated a vision for how the United States must meet its defense needs. I believe that as the Secretary of Defense, Bill Cohen will continue to demonstrate the strong independent characteristics of New England gentlemen and will lead the Clinton administration to provide adequately for the security of the Nation and those who serve in our Armed Forces.

Mr. President, as chairman of the Armed Services Committee, I urge the Senate to confirm William S. Cohen, a dedicated public servant, as the next Secretary of Defense.

The PRESIDING OFFICER. Who yields time?

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I yield myself 5 minutes.

Mr. President, I am pleased to join the chairman of the Armed Services Committee in supporting the nomination of our former colleague, Senator Bill Cohen, to be Secretary of Defense.

I want to commend President Clinton for his willingness to reach across party lines to select a creative and independent thinker like Senator Cohen to serve as his Secretary of Defense. With this appointment, the President has shown his commitment to a bipartisan foreign policy and a strong national defense. He has selected someone who has very strong feelings about the role of Congress in making national security and foreign policy, and on the need for close consultation between the President and Congress in this area. I hope that Congress will reciprocate by working closely and constructively with the President and his new Secretary of Defense.

Mr. President, I come from a State that was represented in the Senate for 23 years by Senator Arthur Vandenberg, who perhaps more than any other Senator in history stands for bipartisanship in national security and foreign policy. I also sit on the Armed Services Committee where Senator Cohen, for 18 years, served with me and displayed to me over and over and over again, as he did to all of our colleagues during this period, his instinct to be a true American patriot—not a Republican, not a partisan, but a patriot when it comes to American security and foreign policy issues. I look forward to working with him in his new capacity to continue that tradition.

Senator Cohen's experience in the Senate should serve him well as he moves on to his new position. In his capacity as a member of the Armed Services Committee, Senator Cohen has been a leader in virtually every major