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

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

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

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

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

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

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

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

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

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

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

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

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

FORMER SENATOR ED MUSKIE

Mr. DOMENICI. Mr. President, I cannot speak about Senator Ed Muskie without the depth of knowledge that Senator Snowe had of his background and his impact on his beloved State of Maine. But it has fallen to me to be, at every stage of my growth in the Senate, on a committee with Senator Muskie.

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

No one can deny that Senator Muskie is the chief architect of environmental cleanup of our air and water in the United States. Some would argue about its regulatory processes, but there can be no question that hundreds of rivers across America are clean today because of Ed Muskie. There can be no doubt that our air is cleaner and safer and try. That ought to lend you in these days of sorrow a bit of consolation, because that legacy is great. Death is obviously inevitable. He accomplished great things before that day occurred.

Mr. President, I yield the floor.

LEGISLATIVE LINE-ITEM VETO

ACT OF 1995—CONFERENCE REPORT

The Senate continued with the consideration of the conference report.

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

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

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

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

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

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

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

Mr. DOMENICI. Mr. President, I yield the floor.

Mr. MCCAIN. Thank you.

The PRESIDING OFFICER. The Senator from New Mexico?

Mr. McCaIN. Mr. President, we will come back to this. I yield the floor to Senator Domenici.

Mr. DOMENICI. Mr. President, for the information of the Senate, Senator Domenici has agreed to yield the floor to Senator McCain for his remarks. I yield the floor to Senator McCain for his remarks.
improve and to make more efficient, and indeed constitutional, this effort, and I am grateful for his continued support.

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

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

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

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

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

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

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

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

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

The lockbox provision of the conference report has also been included to maintain a system of checks and balances in the President's use of the cancellation authority. Any credit for money canceled will be dedicated to budgets for other areas, and any interest. In addition, the President must notify the Congress by transmission of the first issue of the Federal Register published after the transmission.

The President's special cancellation message must be transmitted to the House of Representatives and to the Senate within 5 calendar days exclusively for Sundays after the President signs the underlying bill into law. Such special cancellation messages must be printed in the first issue of the Federal Register published after the transmission.

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

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

The conference report provides Congress with 30 calendar days of session to consider a disapproval bill under expedited procedures. A "calendar day of session" is defined as only those days in which both Houses of Congress are in session. I wish to note that the expedited procedures provide strict time limitations at all stages of floor consideration of a disapproval bill. The conference report sets out procedures designed to prevent delaying tactics including but clearly not limited to filibuster, extraneous amendments, repeated quorum calls, motions to recommit, or motions to instruct conferees.

When the President's message is received, any Member may introduce a disapproval bill. The form of the disapproval bill is laid out in the conference agreement. For a disapproval bill to qualify for expedited procedures, it must be introduced no later than the fifth calendar day of session following the 10th calendar day of session after the President's message. Any bill introduced after the fifth day of session is subject to the regular rules of the two Houses.

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

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

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

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

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

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

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

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

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

Mr. President, there was considerable debate about how the President should handle any targeted or limited spending provisions in law. When the President vetoes a bill, he simply signs the money to fund his priorities over the objections of the Congress, even if he saw fit to cut. Some felt this authority would give the President too much power and might result in too much power shifting to the Executive. The compromise developed by the conferees returns to the idea of a line-item veto—in other words, the President can cancel any line.

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

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

The bill also allows the President to line-item veto any targeted, or limited, tax benefits if those benefits effect 100 line-item veto any targeted, or limited, spending provisions in law. When the President vetoes these provisions, he is effectively denying the Congress the obligation to pay the new benefits.

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

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

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

This is the actual language from the report, which calls for $49,846,000 for special grants for agricultural research. The report language then goes on to state specific parts of the special grants for agricultural research, for example, Wood utilization research in Oregon, Mississippi, North Carolina, Minnesota, New Mexico, etcetera; wool research in Texas, Montana, and Wyoming.

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

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

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

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

Mr. President, many have characterized this legislation as a dangerous and unnecessary reform. This is not accurate and does not take into account the greater picture of the dangers presented by our out-of-control budget process. The real danger is what has happened to the administration of the American Government. Unnecessary and wasteful spending is threatening our national security and consuming resources that could better be spent on tax cuts, deficit reduction, or health care. I do not make the charge that wasteful spending threatens our national security, with a great deal of consideration. After last year's defense appropriations bill, it is unfortunately clear how dangerous this kind of spending can be to our national security. It should now be clear how urgent the need for a line-item veto is.

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

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

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

Anyone who feels that the system does not need reform need only examine the trend in the level of our public debt. As I stated in my analysis of the most recent budget plan, the deficit has continued to balloon and spending continues to increase. In 1960, the Federal debt held by the public was $236.8 billion. In 1970, it was $283.2 billion. In 1980, it was $793.3 billion. In 1990, it was $3.2 trillion, and it is expected to surpass $5 trillion this year.

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

According to a recent General Accounting Office study, $70 billion could have been saved between 1984 and 1989, if the President had a line-item veto. Of course, one of the most important things that we can do to help reduce the deficit. It can change the way Washington operates. Mr. President, we cannot turn a blind eye to unnecessary spending when we cannot afford the change of our priorities and the needs of men and women. We cannot tolerate waste when Americans all over this country are experiencing economic hardship and uncertainty.
The American public deserves better than business as usual. As their elected representatives we are duty bound to end the practice of wasteful and unnecessary spending.

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

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

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

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

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

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

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

Mr. President, I yield floor.

Mr. BYRD. Will the Senator yield?

Mr. President, I thank the distinguished Senator for his customarily gracious and courteous remarks concerning me. I wish to respond in kind and with the utmost respect for both of them. I think that Senator Domenici plans to speak at this time.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

The Senator from New Mexico is recognized.

Mr. DOMENICI. Mr. President, I want to first acknowledge the hard work and dedication that Senator Ted Stevens from Alaska has put into this conference report. Obviously, there is no Senator here who is more dedicated to our prerogatives as a Senate and our prerogatives as individual Senators, and there is no Senator more concerned about maintaining that power.

And, likewise, there is none who understands the effectiveness of the appropriations process better than Senator Ted Stevens from Alaska, I might say, perhaps with the exception of the distinguished Senator from West Virginia.

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

I have already indicated the two leaders on our side have spent a long period of time working with the President, Senator Domenici, and Senator Stevens. I would venture to say that they have done their utmost to get this bill enacted into law.

I do not intend to speak very long at this point. We have completed a conference report after months in conference with the House on the Line-Item Veto Act which is before us.

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

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

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

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

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

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

Mr. President, the conference report on this bill essentially adopts the House's enhanced rescission approach. I repeat, this essentially adopts the House's enhanced rescission approach.

Essentially that approach was similar to the approach advocated by Senators McCain and Coats and many who followed their lead.

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

One, we sunset this authority after 8 years to give Congress an opportunity to review the President's use of this authority.

Senators McCain and Coats, I believe there is a real reason for this, to argue that policy issue out if you, Mr. President, would veto whatever we sent them.

As a matter of course, we would be saying, regardless of how it is used—and
it is a kind of new activity. Even the occupant of the chair, who used it as a Governor, understands and has spoken to me that this is somewhat different in scope when you do it this way, when it is the national picture, and we are treating on a broad, broad ground.

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

No. 2, the line-item veto applies to all new spending, including new direct spending, that is frequently called entitlements or mandates. Despite all the rhetoric, the only real deficit reduction this year has been in the area of discretionary spending. I have misstated the number heretofore, and let me be accurate. The only money saved in the balanced budget argument to this point is less in discretionary spending in the appropriated accounts, domestic, in the year 1995. It is obvious to those who know the budget, we cannot balance the budget or significantly restrain Federal spending by just having a veto for discretionary accounts. If we can continue the idea and concept that we can balance the budget on the back of the domestic discretionary programs, that spending alone.

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

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

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

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

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

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

Again, I congratulate Senators Dole, McCain, and my cohort who chaired this conference, the distinguished Senator from Alaska, Senator Ted Stevens. This is a remarkable achievement on their part. While it will be contested here today, I do not believe we will be contested that this is some extraordinary legislation. Very likely, those that think change is good will clearly understand that this is a formidable event in the ever-changing landscape of the legislation that Congress considers and finally passes.

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

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

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

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

(Mr. KYL assumed the chair.)

Mr. BYRD. Mr. President, "I am no orator, as Brutus is. But as you know me all: a plain blunt man * * * for I have neither wit, nor words, nor worth, action, nor utterance, nor the power of speech to stir men's blood. I just speak right on. I tell you that which you yourselves do know." The Senate is on the verge of making a colossal mistake. The distinguished Senator from New Mexico was correct when he spoke of this measure as being a formidable measure, a far-reaching measure, a measure that will produce a sea change in the relationship between the executive and the legislative branch.

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

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

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

"Either some Caesar or Napoleon will seize the reins of government with a strong hand; or your republic will be as fearfully plundered and laid waste by barbarians in the Twentieth century as the Roman Empire was by the Huns and Vandals before the year of our Lord 540. All that your Huns and Vandals will have been engendered within your own country by your own institutions.

The Senate is about to adopt a conference report. Mr. President, which Madison and the other Constitutional Framers and early leaders would have absolutely abhorred, and in adopting the report we will be bartering away
our children's birthright for a mess of political pottage.

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

The control over the purse is the ultimate power to be exercised by the legislative branch as a check on the executive. The Romans knew this, and for hundreds of years, the Roman Senate had complete control over the public purse. Once it gave up its control of the purse strings, it gave up its power to check the executive. We saw that when it willingly and knowingly ceded its powers to Julius Caesar in the year 44 B.C. Caesar did not seize power, the Senate handed power over to Caesar and he became a dictator. History tells us this, and history will not be denied. The same thing happened in 27 B.C. with the power over the purse, which was wielded by Octavianus, later given the title of Augustus in the Roman Senate, when in 27 B.C. the Senate capitulated and yielded its powers to Augustus, willingly desiring to shift from its own shoulders the responsibilities of government. When it gave to him the complete control of the purse, it gave away its power to check the executive.

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

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

To better understand how our own legislative branch came to be vested with the power over the purse, it seems to me that one should examine not only the roots of the taxing and spending power but also the seed and the soil from which the roots sprang and the climate in which the tree of Anglo-American liberty grew into its full flowering, because only by understanding the historical background of the constitutional principles with which Americans so dearly prize can we fully appreciate that the legislative control of the purse is the central pillar—the central pillar—upon which the constitutional temple of checks and balances and separation of powers rests, and that if the pillar is shaken, the temple will fall. It is as central to the fundamental liberty of the American people as is the principle of habeas corpus.

The roots of the taxing and spending power over the purse are not generally well understood. Therefore, before focusing on the power over the purse as the central strand in the whole cloth of Anglo-American liberty, we should engage in a kaleidoscopic viewing of the larger mosaic as it was spun on its loom of time.

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

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

The fact is, Gladstone himself, contrary to his quote taken out of context, recognized the Constitution's evolutionary development.

British subjects outnumbered all other immigrants to the colonies under British dominion. The forces of political correctness are trying to change this. The very first sentence of Muzzey's history, which I studied in 1928, 1929, and 1930—very first sentence—says: "America is the child of Europe." America is the child of Europe, political correctness notwithstanding.

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

The Constitutional Framers were well aware of the ancient landmarks of the unwritten English constitution. Moreover, they were all intimately acquainted with the early colonial governments and the new state constitutions which had been lately established following the Declaration of Independence and which had been copied to a degree from the English model, with adaptations appropriate to republican principles and local conditions.

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

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

This is the meat of the coconut. On two occasions in Edward II's reign (1307-1327), Parliament had asked for a redress of grievances before it granted taxes on personal property, and in both cases, the substance of Parliament's petitions were approved and enacted into statutes by the king. On one of these occasions, in 1309, the Commons granted a subsidy on the condition, the king should take advantage and grant redress upon certain articles wherein they are aggrieved." Members of Congress should take note.
There are early instances of the allocation of funds for specific purposes, such as the Danegeld, which was a land tax levied to meet requirements arising from Danish invasions and to buy off the invaders. It usually was two shillings an acre, and it was continued for some time after the danger of Danish invaders had passed, and, as a land tax, it was revived by William the Conqueror for specific emergency purposes such as defense preparations in 1068, when the King of Denmark threatened to enforce his claim to the English throne. Although continued as a land tax under William's successors, its original character was lost, and its name, the Danegeld, fell into disuse in 1163, during the reign of Henry II. It became a source of revenue for general purposes.

Feudal charges were levied by kings before the creation of Parliament and appropriated for specific purposes. For example, scutage, a tax levied upon a tenant of a knight's fee in commutation for military service, was assigned to the financing of military measures. Funds collected to buy Richard I's freedom were paid into a special "exchequer of the Calais Treasurer", which was applied to financing the costs of a crusade, as were specific grants for Holy Land conquests in 1201, 1222, and 1270.

In 1315, the Barons successfully insisted that Edward II's personal expenditures be limited to £200 per day. By Edward III's day (1327-1377), it was becoming customary to attach conditions to money grants. Parliament often insisted that the money granted should be spent for certain specified purposes, and for no others.

In 1340, a grant was made by Commons to the King on the condition that it "shall be put and spent upon the Maintenance and Safeguard of our said Realm of England, and on wars in Scotland, and Flanders, and upon places elsewhere during the said Wars." In 1344, a two-year subsidy was granted and appropriated specifically for the war in France and for defense of the North against invasion by the Scots. Two years later, and again in 1348, it was stipulated that the aid must be used for defence against the Scots. Parliament granted a subsidy to Richard II in 1382 with the express provision that it go to the improvement of the defense of England and the keeping and Governance of his Towns and Fortresses beyond the Sea.

The expenses of Henry IV's coronation, who reigned from 1399 to 1413, were funded by a special appropriation. Sometimes treasurers were appointed for overseeing a particular subsidy to ensure that the money was spent in accordance with the terms specified in the appropriations. Ship money was levied in early times in port cities to provide seamen and ships, and it was conceived that the ports were the primary beneficiaries of a strong navy and were safeguarded from invasion by it. In 1382, the revenues from tonnage and poundage were specified for application to the safe keeping of the sea.

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

Wool subsidies were specifically appropriated, on occasion, for defraying the cost of the garrison of Calais. The terms of numerous grants from the 14th century to the 17th century required the application of customs receipts to the defense of the country against invasion and to the protection of ships against pirates and hostile navies. The preamble to the subsidy Act of 1559-60 on Queen Elizabeth I's second reign recognized that his predecessors "tyme out of mynde have had enjoyned unto them, by authoritie of Parliament, for the defence of the Realms and the happy saulfguarde of the Seas" the proceeds of customs charges on certain goods.

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

The principle of appropriating the supplies (sums of money) for specific purposes only, instead of placing the funds without reserve into the king's hands, dates back at least as far as 1340. Here, then, as early as the mid-1300's—650 years ago—was the beginning of the current system of congressional appropriations as we know it. Members of Congress should be aware that the spending of public money is a very serious matter; it was a custom that was not easily shaken. For example, Henry IV had failed in 1407 when he tried to proceed first through the House of Lords. The Commons refused to accept such "a great prejudice to our dignity of the House." The U.S. Constitution, Article I, reflects the very same principle: "All Bills for raising revenue shall originate in the House of Representatives."

In the years passed, Parliament extended its power in the control of government expenditures and the earmarking of appropriations of money for particular purposes. Almost always it was specified that general taxes to the forfeiture of封建上，heavy penalties were imposed if the custom on wool was to be used for the maintenance of Calais, as I have earlier stated, and the tunnage and poundage tax was to be spent for such specific purposes as the navy and "the keeping and saulfguarde of the Seas".

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

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

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

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

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

The insistence by Charles I that he possessed a divine right to levy taxation and could seek funds directly from the people without recourse to the consent of Parliament was a denial of the principle that taxation could not be levied "without the consent of the people of the realm." It was the violation of this constitutional convention, of the right of the taxpayers, through their chosen representatives, that led to the revolt of the colonies in America. The Declaration of Independence explicitly stated that levying money for or to the use of the crown, by pretended prerogative, without the consent of Parliament, for longer time, or in other manner than the same is or shall be granted, is illegal.

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

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

To ascertain the origin of the Constitution, then, it must be sought in the records treating of the fierce conflicts between kings and people—it cannot be found just in Madison's notes, but it must be sought among the records of treating fierce conflicts between kings and people—the evolution of chartered rights and liberties, and the development of Parliament in the island home of those hardy forebearers who crossed the Atlantic to plant new homes in the wilder-
of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure.

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

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

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

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

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

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

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

Madison in the Federalist #48 stated: “The legislative department alone has access to the pockets of the people.” In Federalist Paper #56— as I have already pointed out—Madison stated: “This power over the purse may, in fact, be regarded as the most complete and effectual weapon which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance and for carrying into effect every just and salutary measure.”

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

There was little discussion of the Presidential veto at the Convention, as a reading of the convention notes will show. There was absolutely no discussion whatsoever with reference to a line-item veto or any such modification thereof as we are now contemplating. Henry Clay, one of the greatest Senators of all time, in a Senate Floor speech on January 24, 1842, referred to the veto as “this miserable despotic veto power of the President of the United States.” That is what he thought of a Presidential veto. It is not hard to imagine what Henry Clay would think of this conference report that is before the Senate today. It is ludicrous—nay, it is tragic—that we are about to substitute our own judgment for that of the Framers with respect to what is best for the purse and make the need to check the Executive. Yet, that is precisely what we are about to do here today. We are about to succumb, for political reasons only, to the mania which has taken hold of some in this and the other body to put that power, one of the most political of political inventions, the so-called “Contract with America” into law.

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

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

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

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

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

This so-called line-item veto act should be more appropriately labeled “The President Always Wins Bill.” From the perspective of those who oppose this surrender of power to the President may be likened to the last stand of General George Armstrong Custer, who with 200 of his followers, were wiped out by the Indians at the Battle of the Little Big Horn, in Montana, in 1876, but I see this as the Battle of the “Big Giveaway”, and I do not propose to go along.

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

I know there are those who say that it will only be for 8 years—from January 1, 1997, to January 1, in the year 2005. Senators will note that the bill does not take effect upon passage, upon enactment, the reason being that the majority party does not want to give this President this line-item veto. He may use it against them. And so they have crafted the date to follow the next
It is instructive to reflect on what George Washington had to say about checks and balances and separation of powers in his Farewell Address, and I shall quote therefrom: "It is important that the habits of thinking in a free country should inspire caution in those entrusted with its administration to confine themselves within their respective constitutional spheres, avoiding in the exercise of the powers of one department, to encroach upon another.

The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create, whatever the form of government, a real despotism. *** The necessity of reciprocal checks in the exercise of political power, by dividing and distributing it into different depositories, and constituting each guardian of the public welfare to preside over one only, and by thus divided, to force each to consider its rights, its interests, its duties and to main as nearly as possible a balance between them. *** To preserve a government by which we are governed, we must assert our right to a vigorous government, but we must guard against an overgrown government.

It is my firm belief that we are about to enact legislation that is clearly unconstitutional, and I fervently hope that it will be struck down by the courts. But it might not be. In any event, this possibility does not relieve us of our own responsibility to make a judgment regarding the constitutionality of such legislation and to act accordingly.

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

It would take much of that power and place it, instead, in the hands of the un-elected bureaucrats. This conference report effectively places in the hands of the President and unelected bureaucrats—do I not use those words pejoratively, but they are unelected and they are bureaucrats. And we have to have our eyes wide open. It is an eye opener. Read it, Senators.

Section 1023(a) of this conference agreement would allow the President to cancel in whole—(1) any dollar amount of discretionary budget authority; (2) any item of new direct spending—see, it does not get into entitlements that are already in the law, and they are what is causing the budget deficit; (3) any limited tax benefit; as long as the President is in agreement with the conference report, to see how this is done. It is all plainly there in black and white. And it is a "heads-I-win, tails-you-lose" proposition for the President of the United States. It is an eye opener. Read it, Senators.

The measure before us would allow the President to technically-deemed unacceptable spending. It is a heads-I-win, tails-you-lose proposition for the President of the United States. It is an eye opener. Read it, Senators.

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March 27, 1996

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

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

- a Congress with sixty-five twenty calendar days of session, during which Congress must complete action on the rescission disapproval bill and present such bill to the President for approval or disapproval; or
- an additional ten days (not including Sundays) during which the President may exercise his authority to sign or veto the rescission disapproval bill.

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

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

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

After he or his bureaucrats decide, over the will of a majority of the representatives of the people, what they will carve out of duly enacted legislation, the President will then transmit a special message to Congress. Once he transmits his special message, Congress would have thirty days to pass a rescission disapproval bill. But since a disapproval bill is a direct denial of the President’s veto for his signature or veto. This conference report does not go. He never sees it. Nor does the statement of the managers go, but he can reach into them through his bureaucrats who advise him, “Mr. President, there is a chart in this conference report on page 27, that chart is important, it is a chart of certain items for certain States or certain regions of the country.” And he can say, “Rescind them.”

Congress’ goal should be to give Presidents a stronger tool than they now have to reduce unnecessary spending. But, I do not believe, Mr. President, that we have to gut the power of the purse in order to give the President that new help. The approach outlined in this conference agreement would result in President’s judgment of the fiscal health of the country. Congress would have thirty days to pass a rescission disapproval bill. But since the President is the one who proposed the recision in the first place, I think we are safe in assuming that he would nearly always veto any such disapproval bill passed by both Houses. Therefore, it would be fairly pointless to even bring a disapproval bill to the floor unless it had widespread support of both the House and Senate. And it will almost never have that kind of support. This conference report loads the dice against Congress.

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

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

In a conference report, Congress may actually have to pass an appropriation by a two-thirds supermajority in both Houses, before that appropriation could finally be nailed into law. Is that what Senators from the states of New England want? Can we afford to lose that kind of support? This conference report creates for the White House to use, would have a devastating impact on the President and our states and districts. I am certainly the people of those states and districts. I am certainly the people who would intend for our judgment and our votes to be summarily overruled or dismissed by a President—this President or any other President. Nor would I suspect that the people of our various states would want the deck dealt the cards that way and leaves the President and a minority in each body with the ultimate ace in the hole.

Mr. President, what we are talking about here is a measure that would increase exponentially the already overwhelming advantage that is held by the Executive in his use of the veto power. Out of the 1,460 regular vetoes that have been cast by Presidents directly over these past 208 years, only 105—or 7 percent—have been overridden in the entire course of American history. In 208 years, from the Presidency of George Washington, who vetoed two bills, and it was he who said the President has to veto the whole bill or sign it. It has become the President’s veto. That was George Washington. In 208 years from the Presidency of George Washington right down through President Clinton today, Congress has only been able to override this President’s veto 105 times, 7 percent of the total. In this case, this so-called enhanced rescission authority requirement for a disapproval resolution coupled with the President’s veto power, creates a “heads I win, tails you lose” situation.

This overwhelming advantage on the side of the President is magnified by the fact that often the funds rescinded are likely to be of importance only to a few states or a single region. They may be of comparatively minor importance to no more than a single congressional district. If that is the case, then how many Members of either House are going to be interested in overriding the President’s veto? How many Senators are going to think it is worth standing up to the President and voting against reducing the deficit for the sake of one lonely House Member or a handful of Senators or a few Members of the House? Take, for instance, the following six States: Maine, with 2 votes in the House; New Hampshire, with 2 votes; Massachusetts, 10 votes; Vermont, 1 vote; Rhode Island, 2 votes; and Connecticut, with its 6 votes. Collectively, those states have 23 votes in the House of Representatives and 12 votes in the Senate. Those 35 individuals are going to find it extremely difficult, if not impossible, to interest two-thirds of the total House and Senate membership in overriding a presidential veto on an issue of concern only to the New England region. The type of “divide and conquer” strategy, which this conference report creates for the White House to use, would have a devastating effect on the people of the states and districts.
effect on the power of the purse, and the system of checks and balances, which is the very taproot of the American constitutional system of government.

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

This is a republican form of government. And the theory undergirding our republican system of government has been that of majority rule. This conference report substitutes the minority rule for majority rule by requiring a supermajority vote in both Houses to adopt a disapproval measure overriding a presidential veto of appropriations passed initially by simple majorities in both Houses. The majority of 31 votes in the Senate will sustain a presidential veto that may have already been given a two-thirds vote to override in the other body. In other words, the President and 34 Senators can override the wishes of the other 66 Senators and 435 Members of the House—if this is not minority rule in the field of legislation, what else may one call it? Do Senators wish to substitute minority rule for majority rule in the legislative process?

It is difficult to imagine why this body would want to deal such a painful blow, not only to itself, but to the basic structure of our constitutional form of government and to the interests of the people we represent. Whether the President is a Democrat or a Republican is not my concern. Whether one party or another is in power in the Congress is not my concern here. My concern is with unfounded, but the constant encroachments from the legislative branch, which they were concerned about. Little did the Constitutional Framers dream that the executive branch, and the other was a desire to guard the country against the injurious effects of hasty and bad judgment. Mr. President, it was a gross misapprehension on the part of the Framers who feared that the executive branch would be too feeble to successfully contend with the legislature in a struggle for power. Little did the Constitutional Framers dream that the powers of the chief executive would be possible for the legislative branch, and the other was a desire to guard the country against the injurious effects of hasty and bad judgment. Mr. President, it was a gross misapprehension on the part of the Framers who feared that the executive branch would be too feeble to successfully contend with the legislature in a struggle for power. Little did the Constitutional Framers dream that the powers of the chief executive would be possible for the legislative branch, and the other was a desire to guard the country against the injurious effects of hasty and bad judgment.

The Framers of the Constitution were induced to give to the President the veto power, and they did this for two reasons: the first, was a desire to protect the executive against possible encroachments from the legislative branch, and the other was a desire to guard the country against the injurious effects of hasty and bad judgment. Mr. President, it was a gross misapprehension on the part of the Framers who feared that the executive branch would be too feeble to successfully contend with the legislature in a struggle for power. Little did the Constitutional Framers dream that the powers of the chief executive would be possible for the legislative branch, and the other was a desire to guard the country against the injurious effects of hasty and bad judgment.

The majority leadership in both Houses will have succeeded in enacting a major plank in its so-called Contract With America while it turns its back on the Constitution—the real Contract With America, which we have all sworn to support and defend—and the majority party in Congress will forever carry the burden of the Congress that approved here in the Senate to augment the already enormous power of an all-powerful chief executive by adopting a conference report that will shift the real power of the legislative branch to the other end of the avenue and place that power in his hands—to be used against the legislative branch, to be used against the elected representatives of the people in legislative matters. It is as if the legislative branch has been seized with a collective madness. The majority leadership in both Houses will have succeeded in enacting a major plank in its so-called Contract With America.
voters of 88 members of the House and Senate. Is this not enough, Mr. President, that he would wield so vast and formidable an amount of patronage, and thereby be able to exert an influence so potent and so extensive? Must therefore votes in two Houses and this power, a legislative force equal to that of 16 Senators and 72 members of the House of Representatives?

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

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

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

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

So the judges are concerned about judicial independence. I am concerned about the independence of lawmakers once this conference report becomes law.

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

Mr. President, President Clinton wants this conference report. President Bush would have liked to have had it. Senator Byrd, Mr. President, with the exception of President Taft, have wanted the veto power. So perhaps this President is about to be given the power which he will not be able to exercise, however, under its increased power, until he is re-elected for the second term.

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

In other words, Mr. President, this power of rescinding discretionary spending will not be used by a President to reduce the deficit. It is not a deficit-reducing tool because it does not get to them. It is not a deficit-reducing tool because it does not get to them. It is not a deficit-reducing tool because it does not get to them. It is not a deficit-reducing tool because it does not get to them. It is not a deficit-reducing tool because it does not get to them.

This conference report, when it is examined in its minutest detail, will constitute an inhibition on freedom of speech. It is going to constitute an inhibition on the independence of judges. That is what this judge feared. I say it will constitute an inhibition on freedom of speech in both Houses, an inhibition on a Member's casting of votes on administration and speech. We would witness to an already all-powerful executive, made more powerful by a major share in the control of the purse strings given to him by this conference report, a power that no Chief Executive has heretofore, in the course of over 200 years, shared.

The political leadership of the majority party in this Congress may reap temporary political gain from the enactment of this unwise measure, but the damage that will have been done to our constitutional system of checks and balances will constitute a stain upon the escutcheon of the Congress for a long time to come. As the Roman Senator Lucius Postumius Megellus said to the Emperor Caracalla and his army of expansion of 2 centuries, as I have said, only about 7 percent of the regular vetoes have been overridden. When it comes to overriding the vetoes of bills of disapproval, the President will be vetoed summarily and the Congress may reap temporary political gain from passage of this bill. We
should all stop and think about our Constitution, its system of checks and balances, and the wisdom of the Framers who placed the power of the purse here in this institution. We should all take the time to reexamine the Constitution, particularly those who have not done so recently. We should reexamine it, and think about what that great document says before we agree to hand the type of enhanced rescission authority contained in this conference report over to the executive branch.

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

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

The joint explanatory statement of the conference committee states that a January 1992 GAO report indicates that an item veto would have a substantial impact upon federal spending, that the President's Economic Report for 1985 included a discussion about the pros and cons of the item veto, that the actual savings could be close to zero. Indeed, one can conceive of situations in which the net effect of item veto power would be to increase spending. This could be the result, for example, if a President chose to use the hypothetical item veto power and the Congress responded, it seems likely that the actual savings could have been substantially less than the maximum.

The President might not have applied the veto to every item to which objections were raised in the Statements of Administration Position (SAPs). Some vetoes might have been overridden by the Congress. Some, perhaps all, of the savings resulting from successful item vetoes might have been spent for other purposes which were either acceptable to the President or commanded sufficiently broad support in the Congress to override a veto. There are other constitutional problems with a serious impact on the independence of the Federal judiciary. With enhanced rescission authority the President can delete judicial items, perhaps for punitive reasons. He has no such authority now.

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

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

Constitutional problems in the bill? Proponents say not to worry. Section 3 authorizes expedited review of constitutional challenges by any member of Congress or any individual adversely affected by the item veto bill may bring an action, in the U.S. District Court for the District of Columbia, for
declaratory judgment and injunctive relief on the ground that a provision violates the Constitution. Any order of the district court shall be reviewable by appeal directly to the Supreme Court. It shall be the duty of both the district court and the Supreme Court to advance on the docket and to expedite to the greatest possible extent the disposition of a case challenging the constitutionality of the item veto bill.

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

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

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

This provision is a veritable invitation for the judiciary and certainly none for Congress. The President has full latitude to look through any bill and propose that certain funds and tax benefits be cancelled. The item veto bill would allow the President to rescind funds for all of the judiciary except for the salaries of Article III judges and judges. Anything else funds for courthouses, staff, expenses, etc. is subject to rescission. Are the judges to be made solely for economy and “savings,” or could they be retaliations for court decisions the executive branch finds disappointing? Probably we would never know, but the appearance of executive punishment for unwelcome decisions would be even more chilling.

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

If the President includes judicial items in a rescission proposal, judges would have to enter the political fray and defend their budgets. This is plainly improper and unwise. Furthermore, this kind of leverage over the judiciary is improper and unwise. The President has more lawsuits in federal court than any other litigant, this executive branch has more lawsuits in federal court than any other litigant, this recission authority endangers the independence of the judiciary. The judiciary’s budget rightly belongs to the U.S. Code, budget estimates for the entire judicial branch must be included in the President’s budget without change.

Nevertheless, this item veto bill allows the President to reach into appropriations, to reach into the statement of the managers, to reach into the tables and charts, to reach into judicial items for rescission. Last year, in testimony before the joint hearings conducted by the House Committee on Government Reform and Oversight and the Senate Committee on Governmental Affairs, Judge Gilbert S. Merritt testified that it “seems inconsistent to prohibit the Executive Branch from changing the judiciary’s budget prior to submission, but then to give the President unilateral authority to revise an enacted judicial budget.” He is right. This constitutional issues is not boilerplate in most bills. You may remember that when we included a provision for expedited review in the Gramm-Rudman-Hollings Act of 1985, the result was a Supreme Court opinion that held that the procedure giving the Comptroller General the power to determine sequestration of funds violated the Constitution.

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

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

Not only did Congress recognize this fundamental principal in the Budget and Accounting Act, it expressed the same value in legislation enacted in 1999. Although the 1921 statute prohibited the President from altering judicial budget estimates, the judiciary lacked a separate administrative office to absorb any changes in its own budget. Oddly, it had to rely on the Department of Justice for this work. It was the Attorney General who prepared and presented to the Bureau of the Budget the estimates for judicial expenses. Several Attorneys General considered it “anomalous and potentially threatening to the independence of the courts” for the chief litigant the Department of Justice have any control over the preparation of judicial budgets.

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

The judiciary should not be subject to the rescission requests made under this item veto bill. If such a bill were to pass, it is crucial to give a full ex-

emption to the judiciary. Even granting the judiciary does not mean that the courts would escape the current pres-

sure for budgetary cutbacks. Judges would still have to present their budget estimates and defend them. As Judge Merritt noted in his testi-
mony last year, the judiciary’s budget requests "are subjected to full review by the congressional appropriations com-
mittees in keeping with the fiscal power conferred on Congress by the Constitution. The judiciary must jus-
tify each dollar it receives. This is ap-
propriate and the judiciary cheerfully re-
spects this role of Congress." Scrutin-
y of judicial budgets should be in the hands of Congress, not the Presi-
dent.

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

Notice that the enhanced rescission authority applies only to appropria-
tions bills "signed into law" by the President. This is a very peculiar fea-
ture, if the President vetoes a bill and the veto is overridden, the enhanced re-
scission authority is not available. Similarly, if the President decides not to sign an appropriations bill and it be-
comes law after ten days, Sundays ex-
cepted, the President may not use the enhanced rescission authority either. You might wonder, if the President in last December allowed the defense app-
propriations bill to become law with-
out his signature.

Why does the enhanced rescission au-
thority apply only to signed bills? If the goal is to maximize the oppor-
tunity for the President to rescind "wasteful" funds, why restrict the President this way? What is the pur-
pose? Perhaps we are saying that if the President vetoes a bill and Congress overrode it, this second action by Congress should settle the matter. Congress has reaffirmed and reinforced the priorities established in the bill. Those priorities are not to be second-
guessed in a rescission action.

Clearly this provision puts some pressure on a President not to exercise his constitutional right of veto which is set forth in section 7 of article I of the Constitution of the United States. If he vetoes a bill, and Congress overrode it, this second action by Congress should settle the matter. Congress has reaffirmed and reinforced the priorities established in the bill. Those priorities are not to be second-
guessed in a rescission action.

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

The temptation to simply do a "cut and paste" job on spending bills, there-
by foregoing the route of a full Presi-
dential veto of an entire bill which might then be overridden will, it seems to me, be nearly overwhelming. As a re-

sult, we will have a President who not only proposes," but also "de-
lays," the President is therefore the law-
maker in the White House circumvent-
ing in yet another way the principle of majority rule.

Additionally, such an approach will have the effect of discouraging a Presi-
dent from signing a bill at all, and thus through consensus and com-
promise and negotiations between the two branches, develop a new and better total product which he could then sign. Of the goal of this bill is to allow the President to rescind appropriations for projects and programs he objects to, we all know that appropriations bills con-
tain large lump-sum amounts. We don't put details, or items, in appropriations bills. How does the President reach that level of detail?

The answer is that this bill allows the President to rescind dollar amounts that appear not merely in a bill but also in the conference report and the statement of managers included in the conference report. How can it bind the President? What of these details and items that appear in a conference report or in the statement of managers? This is a nonstatutory source. It complies with bicameralism but not with presen-
tation. How can it bind the President?

I recognize that proponents of this bill can argue that the conference re-
port and the statement of managers will continue to be nonbinding on the President in the management of these particular laws. To a certain extent that is true. The joint explanatory statement for this bill states, "The inclusion of subparagraph (A)(ii) is not intended to give increased legal weight or opportunity to the Conference Com-
pany the law that is enacted." For ex-

ample, if Congress in a conference re-
port takes a lump sum of $800 million and breaks it into one hundred discrete projects, the conference report is not a source of power and nonbinding with re-
gard to implementing the law. The ex-
ecutive branch may depart from the breakdown over the course of a fiscal year. What is legally binding is the ceiling of $800 million. If the executive branch decides that it would like to shift money from one project to an-
other, it can do that by following es-

tablished reprogramming procedures. The breakdown, in that sense, is advis-
ory.

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

It could be argued that any break-
down in the conference report and the statement of managers is a benefit to the President. Itemization creates an opportunity for the President he would not otherwise have. Why should he complain? The constitutional point I raise is not altered by saying that the pro-
dure might benefit the President. When Congress chose to authorize the Attor-
ney General to suspend the deportation of aliens, subject to a one-House veto, that was a benefit. Without that au-
thority the Attorney General would
have to seek a private bill for each threatened alien. But the fact that this procedure constituted a benefit or ad-
vantage to the Attorney General, and that the Attorney General was better off with this mechanism than the pre-
vious one, did not save the one-House veto. In the Chadha case, the Court asked the specific question: did the one-House legislative veto comply with
bicameralism and presentment? Clearly it failed both tests.

Similarly, Presidents sought authority to reorganize the executive branch and accepted the one-House veto that went with this delegation. Reorganization of the executive branch might benefit the executive branch. Congress could not amend a presidential reorganization plan and it could not bury it in committee. The presidential plan would become law unless either House disapproved within a specific time period. Distinct and clear advantages to the President, but that did not save the committee. The presidential plan and it could not bury it in the executive branch. Congress could reorganize the executive branch. Reorganization authority offered many benefits to the Congress, in something that is short of a constitutional question. Is this procedure a forbidden legislative veto? Whether it is a benefit, advantageous for the President is irrelevant in answering this constitutional question.

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

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

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

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

The question remains: Does this bill square with the Chadha ruling? If it does not, we are being asked to consciously adopt a bill that we know is unconstitutional, whatever merit its proponents may claim for it. All of us are capable of analyzing this issue. If the procedure established in this bill amounts to a legislative veto prohibited by the Chadha case, we are violating our oath of office in passing this bill. If enhanced rescission is of value, then we must vote down this bill and insist that its supporters construct an alternative bill that meets the constitutional test. To simply kick this issue to the President is irresponsible. It is curious that Chadha told Congress that if you want to make law you must follow the entire process, bicameralism and presentment, and yet this bill allows the President to make law and undo it upon any legislative involvement. Under the terms of this conference report, whenever Congress receives the President's special message on rescissions, the "cancellation of any dollar amount of discretionary budget authority, item of new direct spending, or limited tax benefit shall take effect." The cancellation is "effective" upon receipt by Congress of the special message notifying Congress of the cancellation. Why is the cancellation "effective" before Congress has an opportunity to respond to the President's message? The executive branch may have legitimate reasons to make sure that agencies do not obligate funds that are being proposed for cancellation, but the language in this bill is clearly beyond the role of Congress in canceling prior law.

Of course the bill gives Congress thirty days to disapprove the President, subject to the President's veto and the need then for a two-thirds majority in each for the override. If Congress does nothing during the thirty day review period, the President's proposals become binding and the laws previously passed and enacted are undone. Through this process the President can make and unmake law by his elevated thoughts on the two principles of government. But never, until the establishment of American independence and the drafting and ratification of that charter which embodied in it the checks and balances and separation of powers, was it ever acknowledged by a people, and made the cornerstone of its government, that the conference phases of the legislative process that are also short of a public law, such as a bill reported by committee or a bill that has passed one chamber. Yet those phases of the legislative process are in a vehicle—continuing resolution of any dollar amount of discretionary budget authority, item of new direct spending, or limited tax benefit must pass both Houses and be presented to the President for his signature or veto. These precedents offer no support for the procedure adopted in this bill. The reference to committee report language in the item of new direct spending, or limited tax benefit conference report does not comply with Chadha.

This is an enormous shift of power to the President but we cannot be sure that the courts will reverse such an abridgment. If Congress is unwilling to protect its prerogatives, the courts won't always intervene to do Congress' work for it. As Justice Robert J. Jackson said in the Steel Seize Case of 1952: "I have no illusion that any decision by this Court can make the law." Congress, in the hands of Congress if it is not wise and timely in meeting its problems. * * *

We may say that power to legislate for emergencies belongs in the hands of Congress, but only Congress itself can prevent power from slipping through its fingers."

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

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

Philosophers, in their dreams, had conjured up a land that Plato had imagined in the bliss of his fanciful Republic. Sir Thomas More had taken great satisfaction in the refuted visions of his Utopia. The immortal Milton had expressed his exalted vision of freedom. Locke has published his great work on the principles of government. But never, until the establishment of American independence and the drafting and ratification of that charter which embodied in it the checks and balances and separation of powers, our own constitutional system, was it ever acknowledged by a people, and made the cornerstone of its government, that the
sovereign power is vested in the masses.

It was just such a noble attachment to a free constitution which raised ancient Rome from the smallest beginnings to the bright summit of happiness and liberty. This was the case. If a President were to attempt to do so, he would be placed in the hands of any President. The power to rescind will be tantamount to the power to amend, and this conference report will transfer to any President the power to single-handedly amend a measure of law where, in the hands of any majority of both Houses is required to amend a bill by striking an item from the bill. The President will have the power to strike an item from a law which, if done by action of the Senate, would require the votes of 51 Senators and 218 members of the House, if all members were in attendance and voting. What an enormous legislative power to place in the hands of any President!

Mr. President, I ask unanimous consent that an article from the New York Times—titled “Points of View: Loosening the Glue of Democracy, the Line-item Veto Would Discourage Congressional Compromise.” The article is by Abner J. Mikva, a retired judge who served on the U.S. Court of Appeals for the D.C. Circuit, a former White House counsel for President Clinton, and a former Member of the U.S. House of Representatives. He served as chief judge in the D.C. circuit from 1991 to 1994.

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

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

[From the New York Times, Mar. 27, 1996] JUDGES' GROUP CONDEMNS LINE-ITEM VETO BILL

(1996)

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

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

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

But any line-item veto bill signed by the President is sure to be challenged in court, and it’s critics or others against judges by vetoing items in judicial appropriations bills.

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March 27, 1996

CONGRESSIONAL RECORD — SENATE

S2947

Judge Gilbert S. Merritt, chairman of the executive committee of the Judicial Conference, said it was unwise to give the President authority over the judicial budget because "he may cut the budget for court clerks, reduce the salary of a sitting Federal judge, undermine the Judicial Branch, and cancel court projects listed in tables and charts that are anathema to the Congress and not the executive branch." He said that the President could cancel spending for projects listed in tables and charts that are "lousy" in the bill itself. He could also cancel any new tax break that benefits 100 people or fewer.

In recent weeks, the decisions of several Federal judges have been harshly criticized by the White House and Republican candidates for President. Judges said such criticism highlighted the need for judicial independence. "Judges were given life tenure to be a barrier against the winds of temporary public opinion," said Judge Merritt. "If we didn't have judicial independence, I'm not sure we could have much faith in our constitutional liberties that we take for granted."

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

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

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

The Federal judiciary has a budget of about $3 billion a year, made up of about 700 appropriations, each of which is subject to the President's line-item veto power. Judge Arnold was one of the signers of a letter to President Clinton urging such a change because anything that makes governing very difficult. The inability to form the political coalitions that are normal in this country creates enormous pressure on the central government. This pressure is one of the causes of the mini-revolts that perpetually arise. The have-nots feel excluded from the process, while the majority for the military regime exercise their power without taking care of the depressed areas of the country.

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

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

It is true that bundling encourages the merger of bad ideas with good ideas, and diminishes the ability to form the political coalitions that are normal in this country creates enormous pressure on the central government. This pressure is one of the causes of the mini-revolts that perpetually arise. The have-nots feel excluded from the process, while the majority for the military regime exercise their power without taking care of the depressed areas of the country.

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

My bias against the unbundling of appropriations and other legislative proposals has been formed in the course of the appropriations process, back in the Illinois legislature, where I served. It seemed the height of irresponsibility to bundle dozens of purposes into a single measure. It is also misconceived since the Illinois Constitution had a "single purpose" clause, under which bills designed to be on only one subject matter. But the "single purpose" clause had been observed in the breach for many years. It was in 1966 when the bundle of the Constitution, which has its headquarters in St. Louis, the Federal Government. Congress may not retaliate against the courts for deciding cases against the Federal Government."
The wisdom of leaving the power of the purse in Congress, as the framers desired as a means of checking the executive, is butressed by the recognition that pork barrel appropriations—the executive power eliminated by the Republican draft—are just unattractive examples of legislation for diverse interests, which is the very stuff of representing the people. Byrd’s contention is that a line-item veto power would take this authority away from Congress and give it to the President. The President would be able to wield his veto not simply on all or any part of “discretionary budget authority,” “any targeted tax benefit,” or “any item of direct spending,” but on any targeted tax benefit. This would significantly diminish the power of Congress to control the budgetary process.

The second constitutional defect with the Conference Report’s approach involves the legitimacy of the cancellative authority given to the President. Proponents of this cancellative power defend it as a legitimate delegation of constitutional authority to the President; however, this argument rests on a misunderstanding of the relevant constitutional doctrine. This misunderstanding is reflected in the CRS Report, which claims erroneously that “while the [Supreme] Court has used a balancing test in some separation of powers cases, it has never done so in a Presidential delegation case.” The latter assertion is simply wrong.

In fact, the Supreme Court has issued two line-item veto cases on constitutional grounds. The first, which is not implicated by the Conference Report, involves delegations from Congress to administrative agencies or instrumentalities. The Court evaluated such delegations under a “functionalist” approach to separation of powers under which the Court balances the competing concerns or interests at stake to ensure that the core function of a branch is not frustrated. For example, the Court used this approach in Morrison v. Olson6 to uphold the Independent Counsel Act in which Congress delegated the executive function of criminal prosecution to an individual not formally associated with any of the three branches. Similarly, in Mistretta v. United States,7 the Court upheld the constitutionality of the composition and lawmaking function of the United States Sentencing Commission, at least three of whose members are required by statute to be lower court judges and to which the Congress delegated the authorities to promulgate, review, and revise sentence-determinative guidelines.

The Republican Draft clearly violates, however, the second line of Supreme Court doctrine on constitutional cases. These cases involve delegations from Congress to the titular head of a branch, such as one of its chambers or the President. In these cases, the Court has used a balancing test; rather, the Court has used a “formalist” approach that treats the Constitution as granting to each branch distinct powers and setting forth specific terminative guidelines.

The framers, however, did not view the power of the purse with the same detachment and immunity from the Constitution as the Court has accorded to the Congress. The framers saw the power of the purse as an instrument for checking the executive, a means of rewarding or punishing the President, and an instrument of policy-making, a means of checking the executive, is butressed by the recognition that pork barrel appropriations—the executive power eliminated by the Republican draft—are just unattractive examples of legislation for diverse interests, which is the very stuff of representing the people. Byrd’s contention is that a line-item veto power would take this authority away from Congress and give it to the President. The President would be able to wield his veto not simply on all or any part of “discretionary budget authority,” “any targeted tax benefit,” or “any item of direct spending,” but on any targeted tax benefit. This would significantly diminish the power of Congress to control the budgetary process.

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Un doubtedly, the Court would follow a formalist approach in striking down the Republican draft. For one thing, the Court would not be able to escape applying the logic of Bowen. The proposed legislation as such is the crucial problem. Bowsher was Congress' attempt to authorize the exercise of certain executive authority by a legislative agent. Near General Accounting Office. The problem is that the President would plainly be exercising what everyone agrees is legislative authority—the discretion to determine whether or not to approve a bill that will become law. Even the law's proponents' admit it allows the President to exercise primary, albeit in their view delegated to him by Congress.

Formalist analysis would be appropriate in evaluating such a delegation's constitutional status. It would be the kind of delegation in which the framers were most concerned: the checks and balances set forth in the Constitution deal directly with how the titular heads of each branch should interrelate. Hence, the Court has opted for a formalist approach to deal with delegations between the branches at their respective apexes to preclude one branch from arrogating itself at the expense of another. The Conference Report would clearly undermine the balance of powers between Congress and the President on budget matters. In so doing, it profoundly alters the balance of power set forth in the Constitution. As Professor Tribe recognizes, a scheme such as the one that would enable the President to nullify the Constitution's forwarding initiatives and priorities as well as to wipe out previously enacted programs that receive their funding through the annual appropriations process. Hence, the framers have established a field in which the President and Congress on budgetary matters. In so doing, it profoundly alters the balance of power.

As Professor Tribe recognizes, a scheme such as the one that would enable the President to nullify the Constitution's forwarding initiatives and priorities as well as to wipe out previously enacted programs that receive their funding through the annual appropriations process. Congress, which the Constitution makes the master of the public purse. It is further evidence of the role of the fiscal advice that the President would be effectively free to disregard. Once again Tribe, as he does not undermine the soundness of his initial reasoning, for the historical record is clear that the framers, as Tribe has recognized himself, never intended nor tried to grant the President any "special veto power over appropriation bills," despite their awareness that the insistance of colonial assemblies are to this end his own power. The proposal of the Conference Report involves the constraints it tries to place on the President's cancellation authority. The latter if for all intents and purposes a republic of the political, the President is in effect making it impossible for the President to exercise his legislative authority—by limiting the grounds a president may consider as appropriate for vetoing something.

Even if Congress was a functionalist approach to evaluate the constitutionality of the Republican draft, it would strike down the proposed law. The reason is that the law establishes a field in which the President and Congress on budgetary matters. In so doing, it profoundly alters the balance of power set forth in the Constitution. As Professor Tribe recognizes, a scheme such as the one that would enable the President to nullify the Constitution's forwarding initiatives and priorities as well as to wipe out previously enacted programs that receive their funding through the annual appropriations process.
SEC. 2. EXPEDITED CONSIDERATION OF CERTAIN PROPOSED RESCSSIONS AND REPEALS OF TAX EXPENDITURES AND DIRECT SPENDING.

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

"SEC. 1012A. (a) Proposed Cancellation of Budget Item.—The President may propose, at the time and in the manner provided in subsection (b), the cancellation of any budget item provided in any Act.

(b) Transmittal of Special Message.—(1) The time limitations provided in subparagraph (b), the President may transmit to Congress a special message proposing to cancel budget items and include with that special message a draft bill that, if enacted, would only cancel those budget items as provided in this section. The bill shall clearly identify each budget item that is proposed to be canceled including, where applicable, each program, project, or activity to which the budget item relates. The bill shall specify the amount, if any, of each such budget item; the committee allocations under section 602(a) and adjust the budget levels under section 311(a) and adjust the committee allocations under section 602(a) to reflect such amount.

(c) Procedures for Expedited Consideration.—(1)(A) Before the close of the second day of session of the Senate and the House of Representatives, respectively, after the date of receipt of a special message transmitted to Congress under section 1012A(b), the majority leader or minority leader of each House shall introduce (by request) the draft bill accompanying that special message. If the bill is not introduced as provided in the preceding sentence in either House, then, on the third day of session of that House after the date of receipt of that special message, any Member of that House may introduce the bill.

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

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

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

(B) A special message of the House of Representatives to proceed to the consideration of a bill under this subsection shall be highly privileged and not debatable. An amendment to a bill considered under this subsection shall be highly privileged and not debatable. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(C) Debate in the House of Representatives on a bill under this subsection shall not exceed 4 hours, which shall be divided equally between those favoring and those opposing the proposed cancellation. In addition to the time limit for debate, it shall not be in order to move to reconsider a bill under this subsection or to move to reconsider the vote by which the motion is agreed to or disagreed to.

(D) Appeals from decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to this subsection shall be in order, but no appeal from such a decision shall be in order.

(E) Except to the extent specifically provided in this section, a bill considered under this subsection shall be subject to the rules and procedures of the House of Representatives. It shall not be in order in the House of Representatives to consider any rescission bill under this subsection under a suspension of the rules or under a special rule.

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

(i) with respect to a rescission bill, reduce the discretionary spending limits under section 252(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 to reflect such amount; and

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

(5) A vote on final passage of the bill consumed or yielded back during consideration of the companion bill introduced in the House under paragraph (1)(A) shall be in order in the House of Representatives.

(b) In General.—The Congress may by concurrent resolution, by a vote of 2-thirds of the Members of both Houses, direct the President to transmit to Congress a special message proposing to cancel budget items and include with that special message a draft bill that, if enacted, would only cancel those budget items as provided in this section. The bill shall clearly identify each budget item that is proposed to be canceled including, where applicable, each program, project, or activity to which the budget item relates. The bill shall specify the amount, if any, of each such budget item; the committee allocations under section 602(a) and adjust the budget levels under section 311(a) and adjust the committee allocations under section 602(a) to reflect such amount.

(c) Procedures for Expedited Consideration.—(1)(A) Before the close of the second day of session of the Senate and the House of Representatives, respectively, after the date of receipt of a special message transmitted to Congress under section 1012A(b), the majority leader or minority leader of each House shall introduce (by request) the draft bill accompanying that special message. If the bill is not introduced as provided in the preceding sentence in either House, then, on the third day of session of that House after the date of receipt of that special message, any Member of that House may introduce the bill.

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

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

(D) A motion to strike any proposed cancellation of a budget item as provided in this section shall not be in order.

(E) A motion in the Senate to further limit debate on a bill under this subsection shall be in order. A motion to close debate pursuant to subparagraph (D), and any amendment offered under this subparagraph, shall not exceed 10 hours minus such times (if any) as Senators consumed or yielded back during consideration of the companion bill introduced in the Senate under paragraph (1)(A).

(F) If the Senate proceeds to consider a bill introduced in the House of Representatives under paragraph (1)(A), then any Senator may offer as an amendment the text of the companion bill introduced in the Senate under paragraph (1)(A) as amended if amendments under subparagraphs (A) and (B) of paragraph (4) and any amendment offered under this subparagraph, shall not exceed 10 hours minus such times (if any) as Senators consumed or yielded back during consideration of the companion bill introduced in the Senate under paragraph (1)(A).

(G) Debate in the House of Representatives on a bill under this subsection shall be subject to the rules and procedures of the House of Representatives. It shall not be in order in the House of Representatives to consider any rescission bill under this subsection under a suspension of the rules or under a special rule.

(H) Amendments and Divisions Prohibited.—Except as otherwise provided by this section, no amendment to a bill considered under this section shall be in order in either the Senate or the House of Representatives. The Senate may adopt a division of the question in the House of Representatives (or in a Committee of the Whole). No motion to suspend the application of this subsection shall be in order in the House of Representatives, nor shall it be in order in the House of Representatives to suspend the application of this subsection by unanimous consent.

(I) Temporary Presidential Authority To Rescind.—At the same time as the President transmits to Congress a special message proposing to cancel budget authority, the President may direct that any budget authority proposed to be rescinded in that special message shall not be available for further obligation or consumption after the President transmits the special message to Congress.
OFFICER. Without objection, it is so ordered.

The amendment is as follows:

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

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

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

"SEC. 1012A. (a) Proposed Cancellation of Budget Items. Any amount that the President proposes to cancel under this title shall be treated as a proposed cancellation under section 1017.

(b) Exercise of Rulemaking Powers. (1) In subsection (a), by striking “and 1017” and inserting “1012A and 1017”;

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

(c) Clerical Amendments.—The table of sections for subpart B of title X of the Congressional Budget and Impoundment Control Act of 1974 is amended by inserting after the term relating to section 1012 the following: “Sec. 1012A. Expedited consideration of certain proposed rescissions and repeals of tax expenditures and direct spending.”

(d) Effective Period.—The amendments made by this Act shall—

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

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

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

Mr. BYRD. Mr. President, I ask for the yeas and nays on the motion. The PRESIDING OFFICER. The yeas and nays are ordered.

Mr. President, were the yeas and nays ordered?

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

AMENDMENT NO. 3665 TO MOTION TO RECOMMIT

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

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

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

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

The amendment is as follows:

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

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Mr. BYRD. Mr. President, I ask for the yeas and nays on the motion. The PRESIDING OFFICER. There is a sufficient second.

There is a sufficient second.

The yeas and nays were ordered.

Mr. President, were the yeas and nays ordered?

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

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

Mr. BYRD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.
subsection or to move to reconsider the vote by which the bill is agreed to or disagreed to.

(D) Appeals from decisions of the Chair relating to the application of the Rules of the House of Representatives in order to suspend the application of a bill under this section shall be governed by the Rules of the House of Representatives. It shall not be in order in the House of Representatives to consider any amendment to a bill introduced pursuant to the provisions of this section under a suspension of the rules or under a special rule.

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

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

(4)(A) Debate in the Senate on a bill under this subsection, and all debatable motions and appeals in connection therewith (including debate pursuant to subparagraph (D)), shall not exceed 30 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader of their designees.

(D) Debate in the Senate on any debatable motion or appeal in connection with a bill under this subsection shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the maver, the majority leader or his designee. Such leaders, or either of them, may, from time under their control, request additional time to any Senator during the consideration of any debatable motion or appeal.

(E) A motion to reconsider a bill under this subsection is not debatable. A motion to reconsider a bill under this subsection is not in order.

(F) If the Senate proceeds to consider a bill introduced in the House of Representatives under paragraph (1)(A), then any Senator may offer as an amendment the text of the conference report in the Senate under paragraph (1)(A) as amended under subparagraph (D), in the Senate under paragraph (1)(A), and any amendment offered under this subparagraph, shall not exceed 10 hours minus such times as (if any) as Senators consumed or yielded back during consideration of the companion bill introduced in the Senate under paragraph (1)(A).

(4) Debate in the House of Representatives or the Senate on the conference report on any bill considered under this section shall not exceed 20 hours, which shall be divided equally between the majority leader and the minority leader. A motion further to limit debate is not debatable. If the Senate fails to limit the conference report is not in order, and it is not in order to move to reconsider the vote by which the conference report is agreed to or disagreed to.

(d) Amendments and Divisions Prohibited.—Except as otherwise provided by this section, no amendments to a bill considered under this section shall be in order in either the Senate or the House of Representatives. It shall not be in order to demand a division of the time of the House of Representatives or in a Committee of the Wholes. No motion to suspend the application of this subsection shall be in order in the House of Representatives, nor shall it be in order in the House of Representatives to suspend the application of this subsection by unanimous consent.

(b) Temporary Presidential Authority to Rescind.—At the same time as the President transmits a special message proposing to rescind budget authority, the President may direct that any budget authority proposed to be rescinded in that special message shall not be made available for obligation for a period not to exceed 45 calendar days from the date the President transmits the special message to Congress.

(c) Definitions.—For purposes of this section—

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

"(2) the term `direct spending' shall have the same meaning given such term in section 250(q)(1) of the Balanced Budget and Emergency Deficit Control Act of 1985;

"(3) the term `budget item' means—

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

"(B) an amount of direct spending; or

"(C) a targeted tax benefit;

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

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

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

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

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

(b) Exercise of Rulemaking Powers.—Section 904 of the Congressional Budget Act of 1974 (2 U.S.C. 611 note) is hereby amended—

"(1) in subsection (a), by striking ``and 1017''; and

"(2) in subsection (b), the cancellation of any budget authority proposed to be rescinded or repealed; or

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

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

The PRESIDING OFFICER. The Clerk will report.

The legislative clerk read as follows: The Senate from West Virginia [Mr. BYRD] proposes an amendment numbered 3650 to amendment No. 1413.

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

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

The amendment is as follows:

"Strike all after the first word in the substitute amendment and insert the following: "instructions to the managers on the part of the Senate to disagree to the conference substitute recommended by the committee of conference and insist on inserting the text of S. 14 as introduced in the Senate on January 4, 1996 (with certain exceptions) which is as follows:"

SECTION 1. SHORT TITLE.

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

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

(a) In General.—Title X of the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 611) is hereby amended by adding after section 1012 the following new section:

"SEC. 102A. (a) Proposed Cancellation of Budget Item.—The President may propose, at the time and in the manner provided in subsection (b), the cancellation of any budget item provided in any Act.

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

"(1) A special message may be transmitted under this section—

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

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

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

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

"(A) the amount that the President proposes to be canceled;

"(B) any account, department, or establishment of the Government to which such budget item is available for obligation, and the specific project or governmental function for which it is to be used;

"(C) the reasons why the budget item should be canceled;"
be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(C) Debate in the House of Representa-
tives under paragraph (1) shall not exceed 4 hours, which shall be divided equally
between those favoring and those opposing the bill. A motion further to limit debate
shall not be in order. It shall not be in order to move to recommit a bill under this subsection
or to move to reconsider the vote by which the bill is agreed to or disagreed to.

(D) The Senate shall not be in order to move
to reconsider the vote by which the motion is agreed to or disagreed to.

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

(3)(A) During consideration of a bill under this subsection in the Senate, any Member of
the Senate may move to strike any proposed cancellation of obligations or other action
under section 601 of the Congressional Budget Act of 1974 for the budget year and each outyear
thereafter which shall be divided equally between the majority leader and the minority leader
or their designees. Such leaders, or either of them, may, from time under this section, submit a
report pursuant to subparagraph (D), shall not exceed 10 hours. The time shall be
equally divided between, and controlled by, the majority leader and the minority leader
or their designees.

(B) Debate in the Senate on any debat-
able motion or appeal in connection with a bill under this subsection shall be limited to
not more than 10 hours, which shall be divided equally between, and controlled by, the
mover and the manager of the bill, except that in the event the manager of the bill is in favor
of any such motion or appeal, the time in oppo-
sition thereto, shall be controlled by the mi-
nority leader or his designee. Such leaders,
or either of them, may, from time under this section, submit a report pursuant to subparagraph (D), shall not exceed 10 hours. The time shall be
equally divided between, and controlled by, the majority leader and the minority leader
or their designees.

(D) The Senate shall not be in order to move
to reconsider the vote by which the motion is agreed to or disagreed to.

(E) A motion in the Senate to further limit
debate on a bill under this subsection is not debatable. A motion to recommit a bill
under this section shall be in order in either House. No additional time to any Senator during the
discussion of any such motion or appeal, the time in oppo-
sition thereto, shall be controlled by the mi-
nority leader or his designee. Such leaders,
or either of them, may, from time under this section, submit a report pursuant to subparagraph (D), shall not exceed 10 hours. The time shall be
equally divided between, and controlled by, the majority leader and the minority leader
or their designees.

(2) The term ‘targeted tax benefit’ means
any provision which has the practical effect of providing a benefit in the form of a
different treatment to a particular taxpayer or a class of taxpayers. Such term does not
include any benefit provided to a class of taxpayers distinguished on the basis of general demographic conditions such as income, number of dependents, or marital status.

(c) C LERICAL AMENDMENTS.—The table of
sections for subpart B of title X of the Con-
gressional Budget and Impoundment Control
Act of 1974 is amended by inserting after the
Heading relating to section 3032 the following:

="Sec. 1012A. Expedited consideration of cer-
tain proposed rescissions and
repeals of tax expenditures and
pension benefits from tax
spending; or

(d) Effective Period.—The amendments
made by this Act shall—

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

(2) apply to bills enacted on or after the date of enactment of this Act;
Mr. DOMENICI. Mr. President, before I suggest the absence of a quorum, let me ask Senator BYRD if he is getting close to being able to agree to a time limit.

Mr. BYRD. Yes, I am.

Mr. DOMENICI. Mr. President, we are in the process of restructuring this to accommodate what he has done. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

UNANIMOUS-CONSENT AGREEMENT

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

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

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

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

Time is now controlled.

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

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

Mr. DOMENICI. Mr. President, pursuant to the unanimous-consent agreement, I yield the floor.

Mr. HATFIELD addressed the Chair.

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

The PRESIDING OFFICER. The Senator from Oregon.

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

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

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

Mind you, at that time, Mr. President, there were about 19 Republicans sitting on this side of the aisle, out of the 96, and they had what they called the Cherokee strip because there were no empty seats for the Democrats to stay on that side of the aisle, and they took these back rows across this Senate and occupied those.

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

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

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

This is a concentration and transfer of power to the Chief Executive. I think it is contrary to Tydings’ constitutional practice that I am appalled that my colleagues on the Republican side should help by leading the effort to give more power to the White House, more power to the President of the United States. I suppose this is a generational gap. I grew up thinking only Franklin Roosevelt would ever be the President of the United States. And the Republican cry was, “He’s leading us to a dictatorship,” the concentration of power in the President’s hands.

The Republican campaign songs, campaign speeches in campaign after campaign, whether you were running for county sheriff or for Governor or for Senator, was to point to the fact that under the New Deal and under Roosevelt, they were concentrating power in the hands of the Chief Executive. And they were.

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

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

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

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

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

So he quoted Walter Lippmann in his speech in saying, “I now stand, and I hate to say this to President Johnson, but I have to now take my position in opposition to the war policy.”
Well, a week or so later Senator Church and Bethine, his wife, were down at the White House for a social function that President Johnson invited them to. As was the custom, they were going through the receiving line to shake hands with the Chief Executive. Senator Church said to President Johnson, “You know, I have this Idaho project, and it’s going to be coming out of the House sometime. I hope you’ll help me on it.” President Johnson looked straight in the eye and said, “Why don’t you go ask Walter Lippmann for it?” “Why don’t you go ask Walter Lippmann for it.”

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

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

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

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

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

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

Yet the same Republicans that talk about the diffusion of power to local government or more power to the private sector, are now wanting to bestow an additional amount of power on the Chief Executive.

I yield the floor.

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

The PRESIDING OFFICER. The Senator has the floor.

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The PRESIDING OFFICER. The Senator has the floor.

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

Mr. DOMENICI. Will the Senator yield?

Mr. STEVENS. I yield.

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

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

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

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

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

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

Today, Congress has the power to cut programs the President proposes that we believe are unnecessary, but unless the President vetoes an entire appropriations bill, he is powerless to single one out. The President has that prerogative. It will be possible for him to eliminate an unnecessary tax break designed to benefit only a narrow, special interest. This bill gives the President those powers temporarily.

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

I have supported this conference report because it includes the core concept that I insisted on when the Senate considered S. 4 a year ago. That was that the line-item authority would apply to all three areas of Federal spending and limited tax benefits in any law that is enacted after the effective date. This bill, unlike the proposals for a line-item veto hit only appropriations and left those large culprits, entitlements and target tax breaks, untouched.

The conference report gives to the President the specific authority to cancel dollar amounts of discretionary budget authority, items of new direct spending, and limited tax benefits in any law that is enacted after the effective date. This bill, unlike the proposals for a line-item veto, will be able to line out specific items in all three areas of Federal spending, whether it be appropriations, entitlements, or limited tax breaks. Together, they account for effective immediately and the money that is not spent goes to deficit reduction. It is part of the budget process, in my opinion. Money that is saved because of the
exercise of the veto in this bill cannot be spent for any other purpose by the President or by Congress. Now, much has been said in the press about the need for the line-item veto to control wasteful spending through the appropriations process. We have heard from the former chairman of the Appropriations Committee and the current chairman of the Appropriations Committee. I still have hopes and dreams that I may be chair of the Appropriations Committee. Many people wonder why I have changed my mind at this time. I think that some Members here seem to miss the fact that the discretionary appropriations account only for 35 percent—not even 35 percent, but approximately 35 percent—of Federal spending. The remainder of Federal spending is mandatory, in the form of entitlements, tax breaks, interest on the national debt, items we cannot control. There is no figure available for the amount of revenue that would have been reduced if the Congress had gone through these targeted tax breaks, what the conference report now calls limited tax benefits.

If the Balanced Budget Act that Congress passed last year had not been vetoed, by fiscal year 2002 discretionary appropriations would account only for 26 percent of Federal spending, a decrease of 9 percent even without the line-item veto. Let me repeat that: Congress agreed to a bill that the President vetoed, that would have reduced the money covered by the appropriations process within a 7-year period by 9 percent. The Congress already vetoed the prospect of an increase to the extent of 9 percent, Mr. President. By contrast, entitlements under the balanced budget bill that we passed and the President vetoed would have grown from 55 percent to 60 percent of Federal spending. The increase would continue. That was an increase of 5 percent in 7 years with no interest on the national debt accounting for the balance of Federal expenditures.

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

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

This conference report allows the President to cancel new direct spending, which means any provision contained in nonappropriations laws which increase Federal spending above the current baseline. By allowing the President to cancel increases in existing entitlement programs, or the creation of new ones, the conference report provides the opportunity to control the explosive growth in mandatory spending. Under this bill, it will cancel any dollar amount identified in an appropriations bill itself, or in the accompanying statement of managers or committee reports.

In addition, if an authorizing law has the effect of requiring the expenditure of funds provided in appropriations law for a particular program or project, the President may also cancel the dollar amount specified in the authorizing law. The example I refer to is the President's authority to cancel the entire dollar amount specified by Congress in the particular document he references—either the law itself or an accompanying report.

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

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

This means, for example, that the President cannot cancel a prohibition on the expenditure of funds to implement a particular law or regulation. The statement of managers before the Senate contains a number of specific examples to illustrate the conference intent with respect to those items the President may cancel in appropriations bills, and I want to incorporate those in my remarks at the conclusion.
I ask unanimous consent that they be printed following my remarks. The PRESIDING OFFICER (Mr. LOTT). Without objection, it is so ordered. (See exhibit 1.)

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

Let me review just briefly some of the differences that had to be resolved. In the House bill, there was an enhanced rescissions approach, while the Senate bill contained a mandatory lockbox for deficit reduction. The House bill did not.

The Senate bill contained a sunset, and the House bill did not. The list can go on and on, but foremost among all of these issues were real questions about just what it was that we were delegating to the President, and thus, the delegation would be found constitutionally.

After many long days and nights, and not a few testy meetings—and I must say, these conferences were the most acrimonious I have faced in 28 years—while the Senate used a constitutional veto that was effective immediately. The Senate bill contained a manda-
tory lockbox for deficit reduction. The House bill did not.

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provided in the law for special grants for agriculture research. Using the authority granted under section 1021(a)(1), as defined under section 10267(A)(i), the President could cancel the entire $50 million.

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

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

As a further specific illustration, the conferees note that the General Construction Account in Public Law 104-46, the Energy and Water Development Appropriations Act, 1996, states: "$804,573,000 to remain available until expended for Army Corps of Engineers construction projects in the Inland Waterways Trust Fund, for which funding is authorized in the Conference Report accompanying the FY 1996 Energy and Water Development Appropriations Act." The conferees intend that cancellation authority may be used. The conferees have included the following paragraph in this example to represent all instances where cancellation authority may be used.

The conferees intend that cancellation authority only applies to whole items. That is, if an item (or project) occurs in more than one state, the President may not cancel only the portion of a dollar amount that is claimed by a state, but must cancel the entire $3,758,000 described in the chart in the Conference Report. However, because the Congress did not break down the allocation of this amount for Fort Fictitious to each state, the President would not have the authority to take a portion of the $3,758,000 allocated to wood utilization research for Michigan only.

To further illustrate this example, the conferees submit the following examples that correspond to a chart contained in the same appropriation law. The chart appears as: $49,846,000 in special grants for agriculture research. The Conference Report accompanying this law contains a table that allocates the $49,846,000 total into lesser dollar amounts of all which correspond to individual research programs. The table, for example, contains a $3,758,000 allocation for Wood Utilization Research (OR, MS, NC, MN, ME, MI).

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

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

The Labor, Health and Human Services and Education and Related Agencies Appropriations Act, 1997, as amended by the Senate Appropriations Committee contained the following section:

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

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

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

The Energy and Water Development Appropriations Act, 1996, (Public Law 104-86, Title II, Department of the Interior, General Administrative Expenses, states:

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

Using the same example, the President may cancel $48,150,000 or the $1,400,000 noted, but may not cancel or alter in any way the proviso requirement this President still has no power to cancel appropriated funds.

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

EXHIBIT 2
Sec. 1021. Line item veto authority
Section 1021(a) permits the President to cancel in whole any dollar amount of discretionary budget authority, item of new direct spending, or limited tax benefit contained in any bill or joint resolution that has been signed into law pursuant to Article I, section 7, of the Constitution of the United States. The cancellation may be made only if the President determines such cancellation will reduce the federal budget deficit and will not impair the performance of the Government functions or harm the national interest. In addition the President must make any cancellations within five days of the date of enactment of the law from which the cancellations are made, and must notify the Congress by transmittal of a special message within that time.

The conferees specifically include the requirement that a bill or joint resolution that must have been signed into law pursuant to Article I, section 7, of the Constitution of the United States. The cancellation authority only becomes effective after the President has exercised the constitutional authority to enact legislation in its entirety. This requirement ensures that the President affirmatively demonstrates support for the underlying legislation from which specific cancellations are then permitted.

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

Likewise, the terms "dollar amount of discretionary budget authority," "item of new direct spending," and "limited tax benefit" have been carefully crafted in order to make clear that the President may only cancel the entire dollar amount, the specific legal obligation in the current law or the best available information.

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

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

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

Section 1021(b) requires the President to consider legislation authorizing and information referenced in law in identifying cancellations. It also requires that the President use the definitions in section 1026, and provides that the President use any sources specified in the law or the best available information. Section 1021(c) states that the President's cancellation authority does not apply for disapproval bill, as defined in section 1026.

The provision is intended to prevent an endless loop of cancellations.

Mr. BYRD. Mr. President, will the Senator yield the floor?

Mr. STEVENS. Yes.

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

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

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

I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

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

There is very little doubt that the Senator from Alaska had the most difficult time with this legislation. That is understandable given the fact that he will play a key and vital role in the upcoming appropriations process which affects us. We are very grateful, not only for his gracious remarks, but for his very cooperative participation in this process.

Mr. President, in behalf of this side, I yield 10 minutes to the Senator from Texas for any remarks he wishes to make.

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

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

In other words, we are here today changing the fundamental powers of the Presidency as they relate to the Congress and altering our system of the distribution of that power because for 40 years we have not been able or willing to say "no." And very important role from time to time during our conference bringing a degree of insight, particularly helping us understand the difference between enhanced rescissions and real line-item vetoes.

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

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

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

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Mr. President, I yield 10 minutes to the Senator from Texas.
have had to say "no" on a constant basis. The problem is we have said "yes" to spending money when "yes" was the wrong answer, forcing families to say "no" to investing in their future and the future of this country, when "no" was right. We are here today to try to change that.

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

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

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

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

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

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

Beginning in 1965, we traded that in for a Government growing at an average of 9 percent each and every year since. What has happened is this year the economy is growing at 17 percent. The average family's take-home, after-tax pay today is lower than it was in 1992. For the whole decade of the 1970s, the average working American family was worse off than they were at the beginning because the economy did not perform, because we spent the seed corn of our economy here in Congress, and the President in signing appropriations bills had no ability to go inside those bills and strike items.

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

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

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

I thank Dan Coats and John McCain for their leadership. This has been a battle which has really raged for 8 years. Many people have deserted of it ever having been in it because we had people who cared strongly about it. I think it reveals the basic lesson of democracy, and that is intensity counts. If you have people who care very strongly about something and they do not give up, ultimately they succeed.

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

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

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

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

I thank the Chair and I yield the floor.

Mr. BYRD addressed the Chair. The PRESIDING OFFICER. Who seeks recognition? The Senator from West Virginia.

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

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

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

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

In essence, my motion to recommit would supplant the provisions currently contained in the conference agreement with those contained in S. 14, as originally introduced by Senators Domenici, Exon, Craig, Bradley, Cohen, Dole, Danforth, and Campbell on April 4, 1995. That measure was, I believe, a workable proposal that would give the President broad and uncomplicated authority to propose the
rescission or repeal of not only appropriated funds, but also, new direct spending and targeted tax benefits.

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

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

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

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

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

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

By adopting this proposal, I believe that the Senate will then have passed a measure that effectively amends the President’s rescissions authority, while at the same time maintaining the constitutional separation of powers by procuring congressional control of the purse strings from an unchecked executive.

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

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

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

How absurd is this? Imagine limiting the scope of the President’s rescission authority to those appropriations that impacted 100 or fewer beneficiaries. Imagine imposing an expedited procedure and condition on that which would befoul any Senator who stood up here and proposed that kind of rescission process. What would the proponents of S. 4 think of the efficacy of their legislation with that type of restriction in place on appropriated funds?

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

But the asinity of such a provision does not stop there. The definition of a tax expenditure, or “limited tax benefit” as S. 4 calls it, is further gutted with exemptions for tax breaks that serve to benefit all persons in the same industry, or all persons engaged in the same type of activity, or even all persons owning the same type of property. These are the very same people who seem to be afraid to give the President of the United States a similar method of cutting wasteful tax breaks. Why should the President be given the power to veto spending for school lunches, or highway construction, or drug programs, and not be given the power to veto the tax deduction claimed by businessmen for a three-martini lunch? Whether wasteful spending is in a program funded through an appropriation or through a tax break, it is still wasteful spending.

The Domenici-Exon expedited rescission bill, which I am offering as a substitute to the current conference agreement, gives the President real authority to go after wasteful tax breaks. Under the substitute, every tax break would get the same presidential scrutiny as every program funded through the appropriations process. No more, but certainly no less.

Finally, but not insignificantly, Mr. President, is the issue of timing. The rescission process that I am proposing is immediate. It is not put off until next year. It is not delayed until 1997, as it is under the conference agreement. Under the substitute, the President would have the opportunity to exercise his newfound rescission powers right away, this year, on any appropriations, or entitlements, or tax expenditures enacted by this Congress. By delaying the President—in this case President Clinton—is not allowed to affect the fiscal year 1997 appropriations. Apparently, President Clinton is not to be
Mr. BYRD. That is my understanding. I have no objection. I ask the request be amended to provide that Mr. MOYNIHAN be recognized at 5 o’clock to speak in opposition to the conference report, time to be charged against my time on the bill.

UNANIMOUS-CONSENT AGREEMENT

Mr. COATS. We have no objection to

Mr. ROGERS. We have no objection to

Mr. President, I ask the time be charged against my time on the amendment.

The PRESIDING OFFICER. The time will be so charged. The Senator from Indiana is recognized.

Mr. COATS. Mr. President, I, first of all, want to take this opportunity to express my respect for the Senator from West Virginia. We clearly are on different sides of this issue. He has been an articulate and zealous protector of the prerogatives and rights of this institution, and he has articulated those points very well.

I also respect his unwavering allegiance and dedication to that proposition and know that it is very, very important, and it has been over the 8 years of debate on line-item veto, a great history lesson for this Senator.

Mr. BYRD. Mr. President, I thank the distinguished Senator for his overly generous and charitable remarks.

Mr. COATS. Mr. President, it is my understanding that it has been cleared that there is a vote at 5:45. I ask that out Senator DOMENICI be recognized in order to make a motion to table the pending motion to recommit, and, prior to that, at 5 p.m. this evening, Senator MOYNIHAN of New York be recognized to speak in opposition—on the floor. Would the time to be charged to the Senator from West Virginia.

Mr. President, my position on enhanced rescission is well known to my colleagues. I believe that passage of this conference report, in its present form, would be a truly monumental mistake that would create the greatest harm to the constitutional balance of powers while contributing very little toward balancing the federal budget. I have been, and continue to be, unalterably opposed to granting any President the power to rescind portions of spending measures under conditions which would require a two-thirds vote of both Houses to override such rescissions.

But if we are to have legislation that amends the current rescission process, I hope at least we have the presence of mind to ensure that we do not give away, in wholesale fashion, that which the constitutional Framers so wisely placed in this branch of government. Accordingly, I urge my colleagues to adopt my motion to recommit.

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

Mr. COATS. Mr. President, I want to say this, with all due respect to the President, I would just alert our fellow Senators that a rollcall vote will now occur at 5:45 p.m. today, that there will still be, after that vote, time remaining on this debate. I am not sure how much of that time will be used. I do know there are some requests for time, so Senators should also expect that there will be additional debate and a vote on final passage on this line-item veto conference report sometime this evening.

Mr. President, I ask the time be charged against my time on the amendment.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. Mr. President, I would like to request some time on this side. I think 5 minutes will be adequate.

Mr. President, I am happy to yield to the Senator from Mississippi whatever time he desires.

The PRESIDING OFFICER. The Senator from Mississippi is recognized.

Mr. LOTT. Mr. President, I want to say to the Senate: I am extremely proud of the U.S. Senate and of the Congress, because I believe before this week is out we will have passed this already described momentous legislation into law. It is not an easy thing to do. It is very difficult.

I remember, soon after I came to the Senate, we had debate on the line-item veto. I think probably the Senator from Indiana and the Senator from Arizona, Senator McCain, were involved in that debate at that time. I remember the work that Senator from West Virginia put into it, and I had a couple of Senators come over and explain to me that might not be a good idea, to support that. They caused me to think a lot about it.

But here, in effect, we are taking action against our interests. This is a fundamental change; there is no denying it. The Senator from West Virginia is right; the Senator from Alaska. Yet, we are going to do it because, first, I think, we have come up with better legislation, and we had 7 years ago, or earlier this year.

We have improved it. We have made it more acceptable to more Senators or Congressmen, Republicans and Democrats. So we are going to go forward with it, and we are going to do it at a time when the majority of the Congress is not of the party of the President in the White House. We are saying that in spite of that—maybe because of it—we want him to have this additional option.

For 15 years, we have been talking about the line-item veto, maybe longer. But I personally have been familiar with it for those years. As a Member of the House, I was for the line-item veto. I remember making speeches when President Carter was in the White House, and I continued to be for it during the Reagan administration, the Bush administration, and I continue to be for it.

I think a mistake that will do great harm to the government. Accordingly, I urge my colleagues to adopt my motion to recommit.
and I kind of agreed. “Look, this is big legislation, important legislation, it may not work out correctly. It may be abused. So after a certain period of time, let’s be allowed to take a look at it.”

I think it will work correctly. I hope it will be extended. I hope to support to extend it when the time comes.

We even talked a lot about the effective date. We wanted to make sure it was going to be handled in such a way it would go into effect as soon as possible. We do have a provision that says if we reach a balanced budget this year, it will go into effect on that date, or January 1, 1997, whichever is earlier. The President and the majority leader talked about that and agreed that was the fair way to do it.

I think we have done what we said we were going to do. I have always felt the President should have this authority. I am in the Congress. I guess I should be jealous of ceding authority to the President. I really do feel the President should have this authority. We can only have one Commander in Chief at a time. He is the ultimate authority. He should have the ability to go inside a bill and knock out things that he feels should be separate. That has been sufficiently considered, that cost too much—whatever reason—without having to veto the whole bill.

I am very pleased this afternoon to rise on the floor of the Senate and commend the Senate for what I believe will be their action today and all those associated with this effort. I think it is the right thing to do. I believe it will help save some of our children’s tax money in the future.

I yield the floor, Mr. President.

The PRESIDING OFFICER. Who yields time?

Mr. BYRD. Mr. President, I yield to the distinguished Senator from Michigan. He is recognized.

Mr. LEVIN. I thank the Chair.

Mr. President, first, let me thank our friend from West Virginia. He has already been told this afternoon by so many of us just how important he is to the Nation and to the U.S. Senate in the cause he is fighting and the many causes he has fought and continues to fight for in this body. Many of the accolades, indeed, have come from people who are on the other side of this issue that he feels should be separately voted upon, which should be highlighted for the public, for the Congress, and we should then vote up or down on.

I, for instance, very much favor the version which the Senator from West Virginia has offered, which would give the President greater power to identify issues in bills, items in bills of which he feels should be separately voted upon, which should be highlighted for the public, for the Congress, and we should then vote up or down on.

I must say, I greatly admire the Senator from Arizona and the Senator from Indiana and others for the manner in which they have proceeded relative to this issue.

Mr. President, as I said, I support the version of the line-item veto which is known as expedited rescission. That version would ensure that any item of spending which is enacted by the Congress, with which the President disagrees, will be separately voted upon, which should be highlighted for the public, for the Congress, and our separate congressional vote.

That approach to the line-item veto would make it impossible to hide questionable spending in these massive appropriations bills. That is one of the goals of the sponsors of the version that is before us. It is to make it impossible to hide questionable spending in these massive appropriations bills.

Senator Byrd’s version—the expedited rescission approach—will also make it impossible for these kinds of items to be hidden by a Congress because it would require and ensure a separate congressional vote on any item of spending that the Congress enact that the President feels is inappropriate.

The problem with the current bill is that it fails the fundamental test of being consistent with the requirements of the Constitution that any repeal or amendment to a law go into effect in the same way that the law itself was enacted. The Constitution establishes the method by which laws are enacted, by which laws are amended, and by which laws are repealed. It is fundamental constitutional law. It is a bedrock law that says that a bill becomes law when it is passed by both Houses of Congress and signed by the President, or if the bill is vetoed by the President, when that veto is overridden by a two-thirds vote in each House.

The bill before us purports to create a third way by which laws can be made, a way not recognized in the Constitution. And this third way, this new way, is by giving the President the unilateral power to repeal a law or part of a law without any action by the Congress.

The Founding Fathers made a conscious decision to give the power of the purse to the Congress and not to the President. This power of the purse serves an important check on the power of the Presidency. It is, in fact, a crucial element in the system of checks and balances which was established by the Founding Fathers. These checks and balances are not a mere abstraction; they were expressly written into the Constitution to protect our freedom.

James Madison warned in Federalist No. 47 that—

There can be no liberty where the legislative and executive powers are united in the same person.

He quoted Montesquieu for that point. It was because of that, the fear of uniting executive and legislative powers in the same person, that article I of the Constitution gives Congress, and not the President, the power of the purse.

Article I, section 1, states without qualification—and the first word in this quote is the critical one—

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Article I, section 8 adds:

The Congress shall have Power To lay and collect Taxes. . . . To pay the debts and provide for the common Defense and general Welfare of the United States; . . . [and] To make all Laws which shall be necessary and proper for carrying into Execution the fore-mentioned Powers. . . .

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it represents the “most complete and effectual weapon with which any Constitution can arm the immediate representatives of the people for obtaining a redress of every grievance and for carrying into effect every just and salutary measure.”

Congress cannot change the system of checks and balances established by the Founding Fathers. We cannot do it, and we should not try. But this conference in the mechanism it chooses, attempts to change the system of checks and balances which are embedded—and may I use the word “enshrined”—in the Constitution of the United States.

The enhanced rescission power that is granted to the President by this bill attempts to alter our constitutional system by giving the President unilateral authority to control spending and to substitute his personal budget priorities for the priorities that have been passed by the Congress and signed into law. This bill would give the President the unilateral power to repeal a statute or part of a statute without any action at all by the legislative branches.

That is the heart of the matter. This bill in front of us would give to the President the unilateral power to repeal a statute or part of a statute, the law of the land, without any action by the legislative branch. That is something that we cannot do.

The Supreme Court said as recently as in the Chadha case, that it is beyond Congress’ power to alter the carefully defined limits and the power of the branches. This is what the Supreme Court said in Chadha:

The bicameral requirement, the Presentment Clauses, the President’s veto, and Congress’ power to override a veto were intended to erect enduring checks on each Branch and to protect the people from the improvident exercise of power by mandating certain prerequisites before those checks would maintain the separation of powers, the carefully defined limits on the power of each Branch must not be eroded.

The Chadha court went on to say:

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Now, Mr. President, the conference report acknowledges what I think is obvious: That when the President signs the appropriations bill—this approach would allow him to cancel within 5 days that appropriations bill—upon his signature that becomes the law of the land. The conference report § 1021 says that notwithstanding the provisions of parts A and B and subject to provisions of this part, “the President may with respect to any bill or joint resolution that has been signed into law, pursuant to article I, section 7 of the Constitution, may cancel in whole or in part,” and it goes on to talk about what the President can cancel.

We are only talking here about bills which have become the law of the land. Those are pretty important words in this government. We do not allow Presidents to pick and choose which laws they abide by and which ones they do not. I cannot think of any other places where we say a law could be canceled by a President acting unilaterally; yet this bill says that a law—and that has become enacted, signed by the President—can be canceled in whole or in part by the President, acting alone.

Of course, the bill gives us the opportunity to override that cancellation with new legislation. That is not the point. That is not what article I of the Constitution provides. Article I of the Constitution as interpreted by Supreme Court opinion after Supreme Court opinion as recently as Chadha says the repeal, the amendment, the modification of a law must be done in the same way that a law is enacted. This bill is a deviation from that. This bill says “Well, we will create another way. We will create a new way. You do not have to enact an amendment. You do not have to adopt an amendment. You do not have to repeal the law the way the Constitution provides. We’re going to say that the President of the United States, acting alone, is able to cancel a law of the United States.”

Now, Mr. President, the argument has been made that the bill just restores to the President the authority that he ever exercised prior to the enactment of the Impoundment and Control Act in 1974. That is plainly wrong. No President has ever exercised the kind of unrestrained right to override congressional budget decisions that this bill would attempt to create. The Assistant Attorney General, Charles Cooper, in the Reagan administration, stated in a 1988 legal opinion, the following:

To the extent that the commentators are suggesting that the President has inherent constitutional power to impound funds, the weight of authority is against such a broad power. This office has long held that the existence of such a broad power is supported by neither reason nor precedent. Virtually all commentators have reached the same conclusion without reference to their views as to the scope of executive power.

I note that same Assistant Attorney General, Charles Cooper, in the Reagan administration, cited no less an authority than Chief Justice Rehnquist, writing in his position as Assistant Attorney General in the Nixon administration, for the proposition that a Presidential power not to spend money “is supported by neither reason nor precedent.”

The Constitution does not authorize the cancellation of a law. The Constitution does not permit the President to repeal a law, to suspend a law, to ignore a law, unless he chooses to veto the law itself. He cannot cancel laws. This is just another word for modifying it or ignoring it or vetoing it.

George Washington said 200 years ago, “From the nature of the Constitution I must approve all the parts of a bill or reject it in toto.”

The Chadha court, Chief Justice William Howard Taft explained, “The President has no power to veto parts of the bill and allow the rest to become a law. He must accept it or reject it, and even his rejection of it is not final unless he can find more than one-third of one of the Houses to sustain him in his veto.”

Congress cannot give the President that authority or even greater authority simply by changing the labels and calling a repeal or an amendment the “cancellation” of a law. It is not the labels that count. It is the substance of what we are doing or purporting to do. What we are purporting to do in this bill is to give the President of the United States a new and a broader and a unilateral right which the Constitution denies him, and that is the right to cancel or veto or amend or modify or ignore the law of the United States.

If it is unconstitutional for Congress to take a particular power under one label, it is not suddenly constitutional merely because we change the label. We cannot acknowledge that the President does not have

GORDON, R. (2014). The bicameral requirement, the Presentment Clauses, the President’s veto, and Congress’ power to override a veto were intended to erect enduring checks on each Branch and to protect the people from the improvident exercise of power by mandating certain prerequisites before those checks would maintain the separation of powers, the carefully defined limits on the power of each Branch must not be eroded.

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the right to "modify" or "repeal" a law under the Constitution, but at the same time maintain that he can "cancel" a law. A veto is no less a veto and a repeal is no less a repeal because we call it suspension or cancellation.

As the Honorable Randolph Dawson of Kentucky has discovered in the Random House dictionary defines a veto as "The power vested in one branch of a government to cancel the decisions, enactments, etc. of another branch. To paraphrase the statement of Senator Sam Ervin on a similar occasion: "It's a veto, Mr. President, and it's a veto""

We call it a cancellation? Can instead of calling it a repeal or an annulment change the outcome legally? I do not think so.

The bottom line is that this bill purports to grant to the President of the United States a unilateral authority, which the Constitution will not allow him to have or us to grant to him; that is, the authority to repeal a law without any action by Congress.

Chadha says that you cannot repeal or modify a law without any action by Congress. The Constitution says it. We cannot do —and we should not attempt to do—what the Supreme Court says cannot be done and which the very logic of the Constitution says cannot be done.

Assistant Attorney General Cooper, again in the Reagan administration, explained this in his legal memorandum on impoundment. He said that because an inherent impoundment power would not be inconsistent with the limitations on the veto power contained in article 1, clause 8, an impoundment would, in effect, be a superfund with respect to all appropriations measures. The inconsistency between such an impoundment power and the textural limits on the veto power suggests that no inherent impoundment power can be discovered in the Constitution.

The same conclusion must be reached with regard to the cancellation power which is proposed in this conference report. The President's impoundment power, cancellation of a provision would, in effect, be a superfund, going far beyond the veto power given to the President in the Constitution, because the President would not be required to veto the entire bill. Congress cannot, by statute, give the President powers that were denied to him in the Constitution.

As Prof. Thomas Sargentich of the Washington College of Law at American University explained in a March 13, 1995 letter to me, regarding an earlier version of this bill which took the same approach:

S. 4 presents the question whether, given that the President cannot unilaterally re write or delete some portion of a bill at the time of presentment, the President nevertheless can sign the bill and decide thereafter to rescind budget authority under the law. Proponents of S. 4 seek to rely on a verbal contrast between "rescission" of budget authority and "repeal" or "veto" of all or part of a statute. The notion is that a 'rescission' is simply the execution of the law pursuant to a broad delegation.

The problem with this suggestion is that it seems to exalt verbal form over legal substance. * * * A repeal of all or part of a statute after it becomes effective can only be accomplished by new legislation enacted with adherence to bicameralism and presentment. Using words like "suspend" or "rescind" or any other somewhat muted verb does not alter the underlying legal situation.

Similarly, in the case of entitlement authority, the bill states that a cancellation "prevent[s] the specific obligation of the United States from having legal force or effect."

The whole purpose of this bill is to deny the legal force or effect of any part of an appropriation that the President has canceled. The Committee's proposal to the Conference Report, the bill says its purpose is to "prevent the specific provision of law that results in an increase in budget authority or outlays for that program from having legal force or effect."

Now, Randolph Dawson defines the term "cancel" to mean, "make void, to revoke, to annul." I think we would all agree that any bill that purported to authorize the President to unilaterally void or annul or revoke a statute would be unconstitutional. Can the result be different because, instead of calling it a repeal or an annulment, we call it a cancellation? Can
Congress to increase Federal funding for projects favored by the President.

But even if one believes line-item veto will have a major impact on the deficit, then do it constitutionally. That is what the Byrd motion is all about. We must do it by giving the President a part of the power over the purse, a power the constitution reserves to the Congress. We should not do it by trying to give the President the right to repeal a law or a portion of a law without congressional involvement.

The sponsors of the bill have taken the position that Presidents are unlikely to abuse these new powers. That view is not only naive, it is also inconsistent with the view of our Founding Fathers and the purpose of our constitutional system of checks and balances. As James Madison explained in "Federalist Number 51":

[T]he great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department, the necessary constitutional means, and personal motives, to resist encroachments of the others. ...If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary.

Moreover, as Justice Frankfurter pointed out in the wake of our battle against dictatorship in the Second World War, the road to tyranny may be paved with the best of intentions. Writings such as the so-called Steel Cases overturned President Truman's attempt to take control of steel mills, as Justice Frankfurter states:

The Founders rested the structure of our central government on the system of checks and balances. For them the doctrine of separation of powers was not mere theory; it was a felt necessity. Not so long ago it was fashionable to find our system of checks and balances obstrusive to effective government; it was called that system as outmoded--too easy. The experience through which the world has passed in our own day has made vivid the realization that the Framers did not intend the institutions to be the exclusive domain of the Constitution. These long-headed statesmen had no illusion that our people would enjoy biological or psychological or sociological immunities from the hazards of concentrated power. It is absurd to see a dictatorship in a representative product of the strongest democratic traditions of the Mississippi Valley.

The accretion of dangerous power does not come in a day. It does come, how- ever slowly, from the generative force of unchecked disregard of the restrictions that fence in even the most disinterested assertion of authority.

Much will no doubt be made in the course of this debate of the fact that the President supports this bill of course he should do it. But I doubt that the President would like Congress to hand over part of its power over the purse.

I would point out however that former Counsel to the President—the President's own counsel—has parted company with President on this issue. In a March 25, 1996, column in the Legal Times, Abner Mikva wrote that line-item veto proposals not only raise constitutional problems, but would also transfer excessive power to the President. Judge Mikva has been consistent, and convincing, on this issue. Back in 1986, Judge Mikva wrote, in the University of Georgia Law Journal:

The source of almost all congressional power—the spine and bite of legislative authority—lies in Congress' control of the nation's purse. If ever Congress loosens its hold on this source of power or if ever the President wrests it away, then, to quote the late Senator Frank Church, "the American Republic will go the way of Rome." The delicate balance created by the Framers will have been destroyed.

Since 1873, when Ulysses Grant first proposed the idea, over 150 legislative proposals have called for Congress to give to the President the ability to veto individual parts of a bill. Congress has thus far rejected such proposals; with any luck, it always will.

For regardless of whether Congress yields budgetary authority or the President usurps it, the threat to our constitutional order is clear. In the same governmental system, the legislature does and must have plenary power over the budget. The power of the purse is the strength of the Congress; take that away, and all else will fall. Is Congress' management of the budget inefficient? Surely it is; the workings of democratic institutions always are. Is it cumbersome? Of course. But that means that if we are to maintain our pluralistic and free society, we will strive to ensure that Congress retains exclusive control of the nation's purse. Only in that event will the delicate balance of our constitutional structure be preserved.

President, this bill is an unwise attempt to take away Congress' power over the purse and undo the system of checks and balances created by our Founding Fathers. It is at odds with the requirements of the Constitution. I urge my colleagues to reject it and adopt a different version called expedited rescission.

Mr. MCCAIN. Mr. President, we were sort of going back and forth from one side to the other. Since Senator LEVIN just went, Senator ROTH was going to go and the great understanding Senator DASHCLE will go. I believe that is the normal custom.

Mr. BUMPERS. Mr. President, I wonder if the floor manager would be willing to enter into a unanimous-consent agreement specifically naming the order of those who were here on the floor so others will know approximately when to come to the floor.

Mr. MCCAIN. I note the presence of the Senator from West Virginia. I hope that is agreed to with him.

Mr. BUMPERS. I refer to our leader there, Senator BYRD, with how to approach this.

Mr. BYRD. Under the circumstances, I would be willing to do that. I am ordinarily not willing to stray away from what the rules require, but I would be happy to do that on this occasion.

Mr. BUMPERS. I suggest that Senator ROTH be recognized next, following which Senator DASHCLE be recognized.

Mr. DASHCLE. Well, Senator BUMPERS has been here longer than I have.
CONGRESSIONAL RECORD — SENATE

March 27, 1996

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Mr. President, I have served on the Appropriations Committee. They probably work as hard as any committee in the Senate, and they are responsible for spending a little over $500 billion, about a third of what the Government spends right now.

For the most part, they do an excellent job with the annual appropriations bills and supplements, but I can tell you from experience that every single appropriations bill has had items in it that we do not need and we cannot afford. The line-item veto will give the President the ability to strike those items that we cannot afford. We may or may not agree, but we will try hard, to help reduce the deficit, and that is our goal. We all know, that we need every possible tool to help reduce Federal spending.

This is a very important issue that was contained in the Contract With America. The Republican-led Congress continues to keep its promises to the American people in passing legislation that will help reduce Government spending, the budget deficit, and the debt burden on our children. In the Senate's first joint hearing with the House on the issue in January 1995, before the Governmental Affairs Committee, Dr. Alice Rivlin, Director of the Office of Management and Budget asked that the Congress provide the strongest possible line-item veto to the President. I agreed with Dr. Rivlin's statement. Congress has acted and will now give the President a very strong version of the line-item veto powers. Both the Senate and House passed the line-item veto overwhelmingly. This week the Senate will pass the conference report. A historic moment.

Mr. President, the time has come to put an end to out of control Federal spending that has taken money from the private sector that creates jobs and economic opportunity for all Americans.

The American people are crying out for a smaller, more efficient Government. They are concerned about the trend that for too long has put the interests of big government before the interests of our job-creating private sector. They are irritated by the double-standard that exists between how our families are required to balance their checkbooks and how Government is allowed to continue spending despite its deficit accounts.

I believe that spending restraint for our nation is one of the most important steps we can take to ensure the economic opportunities for prosperity for our children and for our children's children.

As a nation—and as individuals—we are morally bound to pass on opportunity and security to the next generation.

The Federal behemoth must be reformed to meet the needs of all taxpayers for the 21st century. I am convinced that it is through a smaller, smarter government we will be able to serve Americans into the next century.

The President's recent budget proposals for next year offer clear evidence of the lack of political will to make the hard choices when it comes to cutting Government spending. His budget does not care seriously the need for spending restraint. In fact, Bill Clinton proposes spending over $1.5 trillion dollars this year and nearly $1.9 trillion dollars in 2002. In other
words, the only path that the President proposes is one that leads to higher Government spending, higher taxes, and ever-increasing burdens for our children.

Deficit spending cannot continue. We can no longer allow waste, inefficiency, and overbearing Government to consume the potential of America's future. I am committed to spending restraint as we move to balance the budget. As I said before, the line-item veto, the authority to cancel—specified limitations—appropriations, entitlements, and tax cuts. This cancellation authority bears closer resemblance to impondment authority than to a traditional veto.

While the authority conferred upon the President in this legislation is commonly referred to as a line-item veto, the authority is actually an authority to cancel—with specified limitations—appropriations, entitlements, and tax cuts. This cancellation authority bears closer resemblance to impondment authority than to a traditional veto.

What this legislation before us does is to allow a President to sign an appropriation, entitlement, or tax bill and then exercise a separate authority to cancel an item in those laws, such cancellation to be effective unless Congress, by passing a reconciliation bill, cancels the President’s veto, to negate the President’s exercise of his cancellation authority.

My concern with this legislation is that I have never heard of impounding a tax cut. I have heard of impounding spending, but not a tax cut. As you know, 43 State Governors have line-item veto authority, but not a single Governor has any authority to cancel a tax cut.

It is my studied judgment that the Federal Government spends too much and taxes too much. The well being of our people would be significantly improved if both spending and taxation were diminished. Consequently, I would like to see legislation better if it allowed the President to cancel only spending items and not tax-cut items.

Fortunately, the President’s authority in the tax area is narrow—evidence of the fact that the conferees understood the anomaly of impounding tax cuts. In contrast to the authority on the spending side whereby the President may cancel, first, any dollar amount of discretionary budget authority and (2), any item of direct spending, the authority the President has to cancel only spending items and not tax-cut items is limited. The President has the authority to cancel only items which meet the definition of a “limited tax benefit.”

A “limited tax benefit” is a defined term, which covers two specific categories.

First, a revenue losing provision which provides a Federal tax deduction, credit, exclusion, or preference to 100 or fewer beneficiaries under the Internal Revenue Code of 1986 in any fiscal year for which the provision is in effect; or

Second, any Federal tax provision which provides temporary or permanent transition relief for 10 or fewer beneficiaries in a fiscal year from a change to the Internal Revenue Code.

In further contrast to the President’s authority to cancel on the spending side, the legislation before us provides an additional mechanism that applies only with respect to limited tax benefits, in order to further circumscribe the President’s authority. This mechanism provides that in certain circumstances Congress may reserve unto itself the authority to identify those items in a revenue or reconciliation bill or joint resolution that constitute a limited tax benefit. Such identification by Congress is controlling on the President, notwithstanding the definition of a “limited tax benefit” in the pending legislation, and is not subject to review by any court.

Historically, the Senate has enacted tax legislation either by unanimous consent, in the case of simple bills, or by agreement with a conference report, in the case of more significant bills. As a practical matter, the bills adopted by unanimous consent generally deal with one subject and are not an important concern to advocates of a line-item veto authority in the tax area. Congress, in practice, in conference may contain a large number of tax items. It is in such context that a limited tax benefit might be found.

Consequently, whenever a revenue or reconciliation bill or joint resolution that amends the Internal Revenue Code of 1986 is in conference, the Joint Committee on Taxation is required to review the legislation and identify any provision that constitutes a limited tax benefit. If the conferees include this list of identified items in the conference report, the President can cancel a tax item only if it appears on the list. If the Joint Committee on Taxation finds that the bill contains no limited tax benefits and Congress included the conference report that no such items exist, the President is thereby foreclosed from canceling any tax item. However, if Congress does not include a statement either identifying the specific limited tax benefits or declaring that none is contained in the bill, then the President may cancel a tax item if it falls within the definition of a limited tax benefit and the exercise of the President’s authority meets the requirements of the Budget and Impoundment Act, as written by this pending legislation. Similarly, the President has such authority to cancel a limited tax benefit contained in legislation that is not adopted as a conference report. However, as I said, the occasion for an exercise of such authority would be rare, indeed.

The pending legislation authorizes conferences, in the above circumstances, to include a statement regarding the presence of limited tax benefits, notwithstanding any precedents or House or Senate rules—such as those rules relating to the proper scope of a conference—that might create a point of order against such inclusion. However, nothing in the pending legislation that authorizes the inclusion of such statements in a conference report limits either House from exercising its constitutional rulemaking authority by requiring, rather than authorizing, the inclusion of such statements.

Mr. President, I thank my colleagues for their attention, and I urge that they join me in supporting this needed legislation. I thank the Chair. I yield the floor.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas [Mr. BUMPERS], is recognized.

Mr. BUMPERS. Mr. President, the distinguished Senator from West Virginia yielded me 30 minutes, and I am quite sure I will not take that amount of time. I know there are many wishing to speak. It is one of those cases that Mr. Udall described one time: “I just about everything that needs to be said has been said, but everybody has not said it.” So I am going to add my two cents worth.

First of all, the constitutional problems with this bill are insurmountable. The people listening or watching this need to know in which area, nowhere in the Constitution is the word veto mentioned. Here is what the Framers said in article I of the Constitution:

Every bill which shall have passed through the House of Representatives and the Senate shall before it become a law be presented to the President of the United States. If he approve he shall sign it but if he shall not he shall return it with his Objections to the House in which it shall have originated.

I have been here 21 years. I am not a constitutional scholar but a country lawyer with a great reverence for the Constitution. I have voted against more constitutional tinkering, I will be against any Senator in the past 21 years. Unhappily, we have Members of this body who think that what Madison and Adams and Franklin did 207 years ago was simply a rough draft for us to finish. This is a classic case of casual tinkering with our Constitution, that sacred document which was put together by the greatest assemblage of minds under one roof in the history of the world.

Do you know what else it is? It is a classic political response to an admitted problem. It is a diversion and a distraction of the American people. It tells them, “Here is a simple answer to spending and deficits.”

Nothing could be further from the truth. But people busy trying to make a living and keeping food in the mouths of their children do not have time to examine the complicated details of this proposal.

How did it all start? Where did this idea of a line-item veto originate? I do not know. I had not been here very long when Ronald Reagan was elected President. He had promised to balance the budget, and the first thing you know the deficit was soaring. And 8
years later the national debt had gone from $1 trillion to $3 trillion—tripled in 8 years. I do not want to be hyper-critical of President Reagan, but I heard him say time and time again, “I can’t spend a nickel that the Congress does not give me.”

What he should have been saying is “The Government cannot spend a dime unless I sign off on it.” Despite all of that rhetoric and talk about spending and deficits, from 1980 to 1992, the deficit went from $1 to $4 trillion. President Reagan vetoed an appropriations bill, and President Reagan vetoed one spending bill because it was not big enough—a Defense bill. He vetoed it because it did not have enough money in it.

President Clinton told my friends on the other side of the aisle, “You pass that reconciliation bill, and I am going to veto it.” And they passed it, and he vetoed it. He did not veto it because of the amount of money in it. He vetoed it because of its priorities. But at this very moment, conferees all over this Capitol building are meeting trying to craft a resolution about differences on spending and programs. Frankly, not making much headway.

The President wants another $3 billion in education, and that is the sticking point. Let me digress just for a moment on that point and say I saw the most interesting quote yesterday. I think it was the President of Peru who said everything should be subordinate to our children they are just forming their brain cells, their bones, their minds, and bodies, and they do that in a few short years. His point was that if you neglect your children, you have lost a generation of what would otherwise be healthy, productive citizens.

I thought that comment was beautiful, appropriate, and absolutely true.

So our President is simply saying that for everybody we allow to grow up in ignorance, we all pay a price for it. I do not know whether he is going to get the $3 billion or not. We may have another continuing resolution. I think we will. But my point is this. We are negotiating, and we are talking. If I were to say to my friends on the other side of the aisle, “Let us just send this bill over to the President and let him pick and choose what he wants to kick out,” I would start a riot right on the floor of the Senate. Nobody wants to do that.

I can remember when this line-item veto thing came up. I did not like it. People would say, “Well, you were a Governor, weren’t you?” “Yes, I was Governor.” “ Didn’t you have a line-item veto?” “Yes, I had a line-item veto.”

And I used it occasionally. Do you know what I used it for? To get legislators in line.

“Senator, you know that so-called school in the Utah wilderness bill? That sucker is going to be gone unless you get back down there and change your vote.” That is the way I used it. That is the way a President of the United States would use it. It is a lethal weapon in the hands of the executive branch.

Today, at this very moment, the deficit has fallen from a projected $390 billion—that is what it was projected to be in the 1995 budget deficit of $390 billion. It is half that amount, and it is already down close to $20 billion from that projection, during just the first 3½ months of this new fiscal year. And it was not done with a line-item veto. It was done by people who were determined to try to get the budget balanced.

Oh, this is a terrible, terrible, lousy idea. It started out as a political diversion for the benefit of a party, to say, “Oh, wouldn’t it be great if the President could just take all that pork out of there?” I have seen figures to show if the President utilized the line-item veto to its maximum, it would have about a 1 to 2 percent effect on the total budget. It is unneeded, hopelessly unenlightened, an incredible grant of power to the President of the United States. And, yes, it is patently unconstitutional.

This morning we had a vote. Everybody had known it was about Utah. It was about the Utah wilderness bill. Even the people of Utah, apparently, did not think much of that bill. It is very controversial. But the bill tracked almost exactly what President Bush recommended to the President.

Now, if President Bush were sitting in the White House right now and we were voting on cloture, as we did this morning, and the advocates of the Utah wilderness bill needed the nine votes that they did not get this morning, they could go to the White House and the President could call three Republicans and maybe six Democrats and say, “I have been looking at this bill over here. You know that little old research center you have down in your state? I do not think the people of Utah much like that. They do not think it is needed. They think it is a waste of money. I am inclined to disagree with my people. But, while I have you on the phone, I am a strong proponent of the Utah wilderness bill. Perhaps you and I could sit down. We could talk this over. Maybe you could see my way on the Utah wilderness bill and perhaps I could see your way on that little research center you have in your state.”

It is not unheard of. I just got through confessing to you that is what I did when I was Governor. I have fought against 12 aircraft carriers; I thought 10 was adequate. I fought against bringing those old moth-eaten battleships out of mothballs at a cost of about $2 billion. Now they are back in mothballs. I fought and have continued to fight against the space station, which will go down in history as the most outrageous waste of money in the world. I fought against the President. We finally killed the super collider. On one of those things, the President was on the other side. And we build a multiple launch rocket in Cam-

den, AR. Are you beginning to get the picture? The President might say, “Well, now, Senator, they tell me you are hot against the space station. I am hot for it. And the Defense Department told me they were thinking about moving the manufacturing of the multiple launch rocket from Huntsville, AL, to someplace in Alabama.” Do you think that does not get my attention, 750 jobs?

When James Madison and his colleagues in Philadelphia in 1787 were crafting that document that has given this country the oldest democracy in the history of the world, they said the power of the purse will be vested in Congress. They did not say “unless the President decides to tinker with the figures.” They said, “The Congress shall pass appropriation measures.” Do you know what they gave us in exchange for that? They said, “You can spend the money, but you also have to raise it.” That was supposed to be a nice balance. You have to tax the people. That is not popular. You have to raise the money with taxation before you can spend it, but we are going to give you the power of the purse.

What are we doing? We are saying, “President Madison, you don’t know what you were doing. You made a colossal mistake when you drafted our Constitution, so we are going to correct it. We are going to give the President all the powers you gave him in the Constitution, and take some away from Congress and say you not only have all the executive powers, being Commander in Chief and all those things, we are now going to give you the power of the purse.”

Colleagues, do not, 2 years from now, 3 years from now, come on this floor and start crying about this mistake we are about to make. Oh, I know it is popular. You walk in any diner in America and ask, “Do you favor the line-item veto?” You say, “No, I don’t.” “Do you favor prayer in school?” You bet. “Do you favor a balanced budget amendment to the Constitution?” You bet. “Do you favor a balanced budget amendment to the Constitution?” You bet. Count me in. “Are you against flag burning?” You bet. All those things that have a great emotional impact on people, until they have heard, as Paul Harvey says, “the rest of the story.”

We are saying, “Mr. President, stop us before we spend again. We are out of control, and only you can bring us under control.”

This is not such a good idea for the President, either. Everybody knows President Clinton and I have served our beloved State of Arkansas together for many, many years. He is my friend. But he is for this. I am sick that I did not have a chance to dissuade him before he said that publicly. But he says he is for a line-item veto, and that is a mild disappointment to me.

But, you know, Mr. President, if he puts some projects that are the wrong projects and decides to send them back over here and require us, ultimately, to have a two-thirds vote in both Houses in order to pass, he may
get in trouble in some State. So what do you think he is going to do? He did not just fall off a watermelon truck. He did not get elected President by being stupid. He is going to be very careful about what he excises out of the appropriations bills for fear he will lose that State.

Right now this Presidential race is heating up. Do you think a President is going to take anything big out of a bill in an election year? In an off year, when he is not up for reelection, he might pick out a couple of Senators he does not like, who have been particularly obstreperous and have fought against some of his programs, and in a year when he is not up for reelection, he may decide to take some of those projects out of the States of Senators of the other party.

Bear in mind, when we first started talking about term limits, it swept this country like a prairie fire. It is a terrible idea, a lousy idea. I have been wrong before but never for it. Virtually every Member of this body on the other side of the aisle thought it was wonderful until they got control of Congress, and now you cannot even get it up for a vote.

We kept people's attention diverted just long enough, and the Republicans took control of Congress, and now it is not worth the cost of electricity to have a roll call on term limits. It would be defeated soundly. And when it comes to the line-item veto they wanted a line-item veto so desperately—in all fairness 19 Democrats voted for this thing, too. What was it about? Take the heat off Ronald Reagan. That is really where it all started.

Then, suddenly, the contract, the famous Contract With America, over in the House of Representatives, it was put in the contract: line-item veto. Not many people in America knew it. Not many people in America cared. So we passed it. Now running it, take another, Bill Clinton got elected President—something nobody anticipated—we could not even get conferees appointed. Do you know what the bill now says? It will not go into effect until January 1, 1997, with the ardent, divine hope that Bob Dole will be President January 1, 1997.

Those are the shenanigans that are going on with our sacred Constitution.

Mr. President, another thing that those in Philadelphia did almost 209 years ago is they provided a third branch of Government called the judicial branch. They set up a Supreme Court and such lower courts as the Congress may establish. They are independent, and they are named for life. You cannot threaten them. An article in New York Times this morning describes a letter from the Federal judges vigorously opposing this, because if a Federal court renders a decision the President does not like, the next time around, he can just take their money away from them. He cannot take their salaries because you cannot reduce their compensation as long as they are sitting on the Court. You can take their clerks and secretaries away from them; you can cut the air-conditioning off. To give the President that kind of authority over the independent judiciary is the height of irresponsibility.

We have an independent judiciary. We have, fortunately, had a wise man named John Marshall, who was Chief Justice of the Supreme Court when the Marbury versus Madison case was argued. John Marshall said with regard to those rules they are passing out there in conformance with this Constitution or not?"

So was born the doctrine of judicial review. Thank God for John Marshall and judicial review and a truly independent judiciary.

So, Mr. President, this bill gives the President a legislative authority to amend bills. He can literally amend our bills. I am terribly uncomfortable knowing this bill is going to sail through here with a big majority, but I am comforted in the fact that I believe the independent judiciary that was set up to stop such foolishness as this will, indeed, do so. So I repose my trust in the Supreme Court of the United States with this issue.

I yield the floor.

Mr. HOLLINGS. Mr. President, when the Senate passed the line-item veto back in March of 1995, taxpayers across the Nation were elated. Republicans authored the report of 69 Democrats and Republicans that worked shoulder to shoulder for the common good. What a difference a year makes. A year later with Presidential politics well underway, Republican conferees have engaged in an outrageous bait-and-switch operation designed to win political points and push meaningful reforms onto the back burner. Gone is the carefully crafted compromise bill offered on the floor by the distinguished majority leader of the Senate. Republican conferees have substituted legislation based on the McCain-Coats enhanced rescission proposal—a measure that in 1993 received only 45 votes. In abandoning the Senate approach, the Republican majority has dangerously eroded bipartisan support for the Senate line-item veto and now threatens to snatch defeat from the jaws of victory.

Mr. President, I have been in this fight for too long to accept such circus tricks. For well over the last decade, I have always been a line-item veto as a meaningful way to hold the President short to expanded Presidential line-item veto. Instead, conferees have substituted legislation based on the McCain-Coats enhanced rescission proposal—"a measure that in 1993 received only 45 votes. In abandoning the Senate approach, the Republican majority has dangerously eroded bipartisan support for the Senate line-item veto and now threatens to snatch defeat from the jaws of victory."

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Second, the conference report's definition of a limited tax benefit would do little to focus scrutiny on special interest tax breaks. The original Senate bill, like the legislative language in the Republican Contract With America, appropriately recognized that pork is pork, be it of the tax or spending variety. But under the conference report, the definition becomes a tax lawyer's dream. It states that the item would be considered a limited tax benefit only if it is a tax benefit that goes to 100 or fewer beneficiaries or a transitory relief provision that accrues to
Mr. President, this struggle will continue. And I will be willing in the future to work with colleagues on both sides of the aisle, as I have in the past, to develop a responsible, workable, constitutional, and bipartisan legislative package. Let me express my hope that by the end of the day today, but with the Presidential races in full swing, I fear once again that politics, not policy, is the driving force behind today's controversy.

Mr. BIDEN. Mr. President, I have for many years supported a line-item veto that can help to wipe out wasteful special-interest spending items that are added to our appropriations bills. But I have also cosponsored and supported line-item veto authority for the President that includes the authority to cut special-interest tax breaks, that lose money from the Treasury as surely as any spending program. In many ways they weaken our control over the deficit more than annual spending bills.

Because tax breaks characteristically last for years with little or no review, they can cause more damage than any single item in 1 year's appropriations bill.

The line-item veto we passed out of the Senate last year, the separate enrollment version that I have consistently supported for over a decade, included clear and strong language that put special-interest tax breaks under the same veto power as any pork-barrel spending project.

Unfortunately, the version that came out of conference with the House has so diluted that provision that it may well apply to virally no tax breaks. That is why I will vote for Senator BYRD's proposal, that restores the clear authority to cut tax breaks as well as special-interest spending.

Mr. DOMENICI addressed the Chair. The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. What is the time situation, Mr. President?

The PRESIDING OFFICER. The Senator from New Mexico has 86 minutes. The Senator from West Virginia has 4 hours 9 minutes.

Mr. DOMENICI. At this moment, do I understand there is 5 minutes before Senator Moynihan's time?

The PRESIDING OFFICER. That is correct.

Mr. DOMENICI. I yield myself 5 minutes.

Mr. President, before we finally vote to table Senator BYRD's motion, there will be another 15 minutes on our side for discussion and some kind of rejoinder. But I just want to have a 5-minute discussion with the Senators about this issue of the shift in power.

I say to all of them, I have been concerned about that for a long time. I was concerned about it as this line-item veto concept, over the last decade, worked its way through here. But I do not think we ought to leave the record with an inference that Congress is left with no power to respond to a President's use of this item veto authority.

So if, indeed, Mr. President, any President of the United States chooses to make a mockery of the Senate or the House by arbitrarily exercising this veto, let me suggest the Senate has to confirm his Cabinet. The Senate has to confirm his appointees, and there are hundreds of them. The United States need legislation. They work to get elected, and they send us their proposals. Their proposals are their policies and they need to pass Congress to become law. I suggest that any President who would choose to act capriciously and arbitrarily in this line-item veto exercise will do so at his own risk. We are really trying out this item veto—it is an experiment in seeing if we can do a better job of spending the taxpayers' money. I believe Presidents who will arbitrarily and capriciously use that tool take unto themselves the opportunity that will certainly find that Congress will have a chance to re-establish arbitrarily to itself.

I am not threatening this, and I am not suggesting a tit-for-tat sort of situation. But the truth of the matter is, there is some serious balance of this power that remains vested in the Congress of the United States. Indeed, speaking for our institution, the U.S. Senate, this institution, there are plenty of things Presidents need the U.S. Senate to do so they can do their executive work well.

After all, the President is the Executive. He needs Congress to help him so he can use his Executive powers. If he chooses to use them arbitrarily with reference to the line-item veto, then, obviously, he might find an uncooperative Senate, he might find an uncooperative Congress. I do not think that is ever going to occur, but I thought it might be good for the record just to explore that we have not given away all our power, we have not given away all our ability to say 'no' to Presidents of the United States on a myriad of things that the President needs for his Executive power.

Now, why do I say it that way? Because the contention is that he is taking away some of our prerogatives as legislators in the appropriating process, and if he chooses to do that arbitrarily, then he is, obviously, weakening our power.

I am suggesting we are not without recourse. I think there is going to be a give and take for a few years, but we are not also accepting this concept in perpetuity. We are giving the Executive the line-item veto for 8 years, two full Presidential terms. Then we will have to pass it again or change it.

But, indeed, that event of taking another look to see if it is being used properly or if we should further define things is not left solely within the discretion of Presidents, because this line-item veto sunsets in 8 years and we are not also accepting this concept in perpetuity. We are giving the Executive the line-item veto for 8 years, two full Presidential terms. Then we will have to pass it again or change it.

The arguments about constitutional, the arguments about balance of
power are serious. I commend the number of Senators for raising these serious issues in very delicate and sincere ways and I commend them for their concern. Most of all, I commend Senator Byrd for his dedicated explanation and the fact that he wrote a whole book about the Roman Senate versus losing its power and compared it in many ways to what he perceives might happen in this regard.

I was privileged to get one of those books. I do not always read books that are given to me, but I read that book. In fact, I told the Senator I had and I thought it was exciting.

He reminded me the successor to Rome was Italy. He reminded me I might even be a descendant of one of those people he wrote about.

Nonetheless, I thought that we ought to get this short 5-minute argument in response, just for our perspective in terms of why we are not fearful, why we do this with open eyes and open minds, that it will help the American people get better Government at less cost. I yield the floor.

The PRESIDING OFFICER (Mr. Abraham). The Senator from New York is recognized.

Mr. MOYNIHAN. Mr. President, I would like to begin by joining the chairman of the Budget Committee in expressing my profound gratitude and admiration to the revered, sometime Chairman of the Budget Committee, Senator Byrd, whose obstinate veracity we all admire. I thank the Senator.

Mr. BYRD. Mr. President, I thank the distinguished Senator from New York, whose obstinate veracity we all admire. I thank the Senator.

Mr. MOYNIHAN. Mr. President, I rise in the sincere confidence that this measure is constitutionally doomed. That speaks to the stability of the American judicial system, a stability sustained in so many moments of peril by the American judiciary.

By contrast, I find myself once again agitated that a measure of such enormity—I use that word in both of its meanings—comes to us for so frivolous a reason. We are told by the committee of conference that the purpose of the conference report, which is to say the bill, is to promote savings. We are further informed that this is necessary because Congress cannot simultaneously defend the national interest and the national security.

I wish to state my concern that the measure before us is not a stable, constitutional measure. I wish to state my concern that it is not a stable measure.

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The national debt has quintupled since 1981 and 1996. Our total national debt amounted to just $1 trillion in 1981. Yet today, just 15 years later, that debt exceeds $5 trillion. Those numbers are not quite accurate, but they are approximate and will do.

I have walked this floor for on to 15 years making the plain point that the increase in debt of the 1980s was an act of policy, designed to reduce the size of the Federal Government by reducing its fiscal resources. Fifteen days into his Presidency, February 5, 1981, President Reagan declared in a television address, "There are always those who told us that taxes can't be cut until spending was reduced. Well, you know, the bipartisan, bicameral Parliament that has cut extravagance until we run out of voice and breath or we can cut their extravagance by simply reducing their allowance."

A huge increase in debt was the result. But at least until now we have not set out to mangle the Constitution to make up for the honest mistakes of one administration.

The separate enrollment bill passed by the Senate last March would have required appropriations bills to be disassembled by the enrolling clerks after passage and presented to the President, one by one, for his signature. During that debate I spoke at some length about a Constitution and practice defects. The legislation before us is somewhat less convoluted. But its effect on the separation of powers between legislative and executive branches would be just as profoundly destabilizing.

I will describe at this point what has been described as the methods, the procedure for cancellation. Once such a cancellation is made, it would ultimately require a two-thirds vote of the Congress to override the legislation. It would have us depart dramatically from the procedures set forth in the plain language of the presentment clause in article I, section 7.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a Law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it. There is nothing ambiguous about this provision. The Supreme Court declared in INS versus Chadha in 1983 that—I quote the Court:

"It emerges clearly that the prescription for legislative action in section 7, represents the Framers' decision—[the framers'] decision, Mr. President—that the legislative power of the Federal Government be exercised in accord with a single, finely wrought and exhaustively considered procedure.

In Chadha the court held unconstitutional a statute that permitted either House of Congress by resolution to invalidate decisions of the executive branch or to deport aliens. This so-called legislative veto, according to the Court, impermissibly departed from the explicit procedures set forth in article I, which the court said were 'integral parts of the constitutional design for the separation of powers.' And 3 years later, in Bowsher versus Synar, the Supreme Court was equally scrupulous in requiring strict adherence to the procedures set forth in article I. In Bowsher the Court validated the provisions of the Gramm-Rudman-Hollings Deficit Control Act, giving the Comptroller General of the United States authority to execute spending reductions under the act. The Court held that this violated the separation of powers because it vested an executive branch function in the Comptroller General, who is a legislative branch official. "Underlying both decisions," the Court wrote, "was the premise that the powers delegated to the three branches are functionally identifiable, distinct, and definable.

There is no ambiguity about the meaning of the requirements of article I, section 7, nor is the incoherence about why the framers vested the power of the purse in Congress. Madison in Federalist No. 58:

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

Until the Supreme Court considers this bill—and it surely will—we will not have a definitive constitutional determination. But some of the Nation's leading constitutional scholars have already concluded that this legislation is unconstitutional.

Professor Gerhardt argues that granting the President power to reconfigure bills passed by Congress is a legislative function which may not be delegated to the Executive. Finally, he notes that even if Congress could delegate the proposed veto power to the President, 'Congress lacks the authority to restrict Presidential authority by limiting the grounds a President may consider as appropriate for vetoing something.'

In his treatise, 'American Constitutional Law,' Laurence H. Tribe of the Harvard Law School writes that—

empowering the President to veto appropriations bills line by line would profoundly alter the Constitution's balance of power. The President would be free not only to nullify new congressional spending initiatives and priorities, but to wipe out previously enacted programs that receive their funding through the annual appropriations process.

Professor Tribe goes on to say:

Congress, which the Constitution makes the master of the public purse, would be de moted to the role of giving fiscal advice that the Executive would be free to disregard. The Framers granted the President no such special veto over appropriations bills, despite
their awareness that the insistence of colo-
nial assemblies that their spending bills
could not be amended once they passed the
lower house had greatly enhanced the growth
of legislative power.

Yesterday, we asked Professor Tribe for
his opinion on the legislation before the
Senate today. He graciously tele-
phoned our office this morning to say
that after studying the conference re-
port, he has concluded as follows. This
is Laurence H. Tribe this morning:

This is a direct attempt to circumvent
the constitutional prohibition against legisla-
tive vetoes, and its delegation of power to the
President to make legislative determina-
tions. Our members have not forgot-

ted this, I fear, of the rest of the
Reps. And the House is also interested
in the kind of compromise the Framers
made. We did it by compromise. We did it
very similarly. Now, I mentioned that the purpose of
the Joint Tax Committee was to limit runaway
spending and thereby reduce the debt. I am here to report—and I
hope someone will hear—that, in point of
fact, the era of runaway spending is
behind us.

The Federal budget is in primary sur-
plus for the first time since the 1980's—
for the first time in about 5 years. The reduction
was primarily open to General Motors and
Chrysler—apparently escape the line-item veto.

The tax-writing committees often and
properly find that tax relief may
be justified in narrow circumstances.
Such narrow relief is and ought to be
granted sparingly, yet these features of
the bill create a perverse incentive to
craft broader tax benefits than nec-

essary in order to avoid application of
the line-item veto. This is surely coun-
terproductive.

Second, while seemingly objective on
its face, the definition includes several
elements that are so ambiguous, raising a number of questions. For ex-

ample, what does it mean to be "simi-
larly situated?" Can a provision be
drafted to benefit all baseball team
owners to the exclusion of other sport
franchises? How does one determine
who are the beneficiaries of a particu-
lar provision? Would the football
caches pension provision—and, yes,
there was one, in the vetoed Balanced
Budget Act of 1995—be deemed to bene-
tifit on the one hand or the other, or
more than 100 coach participants? I
could go on longer than the Senate
would be interested or perhaps even edified to hear.

There is a final point, sir. By vesting in
the Joint Tax Committee on Taxation
the exclusive authority—not subject to judicial review, not subject to debate
on the Senate floor—the exclusive au-

thority to make these determinations,
this legislation would effectively grant
to the Joint Tax Committee the power to make
decisions on the tax-writing committee
chairmen and the House Committee on
Ways and Means—those two persons to
the exclusion, I fear, of the rest of the
Congress, the Members of either body.

While the Joint Tax Committee may
indeed be the best institutional
decisionmaker on technical tax issues,
the decision of what constitutes a lim-
ited tax benefit can and should
depend on the judgment of the chair-
men and ways and means members.

Mr. President, these compromises
make major legislation agreeable and
effective. Supposing a member with

not constitutional. He emphasizes now
the President clearly fails to meet the req-

uisites of article I, section 7. Furthermore,
nothing in my letter of January 13, 1993 re-

fers to Professor Gerhardt's construc-
tion. Indeed, he argues that the framers
had not anticipated this. But we got that.
How? They were given a tax cred-

it for the FICA tax they are required to
pay on their employees' tips. Well, it
was a compromise. I could go on and
about that. Gasoline and diesel fuels
were raised 4.3 cents per gallon. Oh,
Mr. President, do I remember that 0.3
cents—a week in a room on the third
floor without windows of this Capitol.
But we got that. How? Airlines were
raised 4.3 cents per gallon. Oh,
Mr. President, do I remember that 0.3
cents—a week in a room on the third
floor without windows of this Capitol.
But we got that. How? Airlines were
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floor without windows of this Capitol.
But we got that. How? Airlines were
raised 4.3 cents per gallon. Oh,
which a chairman worked were asked to make a concession in return for an accommodation; supposing that member had to think: The minute this bill becomes law, that chairman will go to that President and say, “Take out that provision that was made for the Senator from Louisiana because we only done to get your bill by, Mr. President.” You will not have that which makes legislation possible. You will not have that spirit of trust, which performance reinforces and creates the stability of our institutions. For there is no trust, there will be no compromise, and if there is no compromise, there will be no Government—no stable Government.

I sometimes think of this simple fact. Mr. President, there are seven nations on Earth that both existed in 1914 and have not had their form of government changed by violence since 1914. There are two since 1800, and we are one of them. We are one of the seven and we are one of the two. That continuity did not come easily, nor should it be assumed a given. That stability rests on the rock bed of the Constitution, and we do a very poor service to that stability when we begin to dynamite away parts of that rock bed. We are one of the seven and we are two since 1800, and we are one of those few significant flaws in the Conference Report that I identify and explain below, its constitutionality is plainly doomed.

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

In my opinion, there are three fatal constitutional problems with the procedures outlined above. First, the law effectively allows any portion of a bill enacted by Congress that the President signs into law but that he does not understand, in some of the facts that Congress will have never voted on it as such. This kind of lawmaking by the President clearly violates Article I, section 7, which grants “to Congress alone the discretion to package bills as it sees fit.”

Article I states further that the President’s veto power applies to “every Bill . . . . Every Order, Resolution or Vote to which the Concurrence of the Senate and House of Representatives may be necessary. This means that the President may wield his veto on the legislative product only, as Harvard Law Professor Laurence Tribe maintains in Mistretta, when Congress has chosen to send it to the White House: be the bill small or large, its concerns focused or diffuse, its form particular or omnibus, the President must accept or reject the entire thing, swallowing the bitter with the sweet.”

Tribe’s subsequent change of position is of no consequence, because he was right in his initial understanding of the constitutional dynamics of a statutorily created line-item veto mechanism. The fact that the President has an interest in modifying in some way the structure of the legislation in which Congress has chosen to send it to the White House: be the bill small or large, its concerns focused or diffuse, its form particular or omnibus, the President must accept or reject the entire thing, swallowing the bitter with the sweet.”

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Article I, section 7, which grants “to Congress alone the discretion to package bills as it sees fit.”

I will also, finally, ask unanimous consent that the letter from Prof. Michael Gerhardt, along with two letters from the Judicial Conference of the United States, be printed in the Record at this point.

The second constitutional defect with the Conference Report’s basic procedures involves the legitimacy of the canceling authority given to the President. Proponents of this cancellation power defend it as a legitimate delegation of congressional authority to the President; however, this argument rests on a misunderstanding of the relevant constitutional doctrine. This misunderstanding is reflected in the CRS Report, which claims erroneously that “while the [Supreme] Court has upheld the Individual Counsel Act in which the Congress had delegated the executive function of criminal prosecution to an individual not formally associated with any of the three branches. Similarly in Mistretta v. United States, the Court upheld the constitutionality of the composition and functioning of the United States Sentencing Commission, at least three of whose members are required by statute to be lower court judges to which the Congress delegated the authorities to promulgate, review, and revise sentence-determinative guidelines.

The Republican Draft clearly violates, however, the second criterion to Court decision on congressional delegations. These cases involve delegations from Congress to the titular head of a branch, such as one of its chambers or the President. In these cases, the Court has not used a balancing test; rather, the Court has used a “functional” approach that treats the Constitution as granting to each branch of the federal government the authority to do whatever a majority of it deems necessary to carry out its delegated powers. Congress has granted the President authority to carry out whatever the White House deems necessary to carry out its delegated powers.

There being no objection, the letters were ordered to be printed in the Record, as follows:

College of William & Mary School of Law, Williamsburg, VA, March 27, 1996

Hon. Daniel Patrick Moynihan, U.S. Senator, Washington, DC.

Dear Senator Moynihan: I appreciate the chance to share with you my opinion on the constitutionality of the Line Item Veto Act of 1996, as set forth in the Conference Report, dated March 4, 1996 (hereafter “the Republican draft” or “the Conference Report”).

In this letter, I focus only on a few of the more serious problems with the Republican Draft and do not purport to analyze exhaustively its constitutionality. Even so, I am of the view that, given just the few significant flaws in the Conference Report that I identify and explain below, its constitutionality is plainly doomed.

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

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of Review partially composed of members of Congress with executive veto-like power over the decisions of the directors of the Metropolitan Washington Airports Authority. Under certain circumstances, the President would follow a formalist approach in striking down the Republican draft. For one thing, the Court would not be applying the Chevron approach that Bowsher v. Synar applied to the proposed law. Where the crucial problem in Bowsher was Congress’ attempt to authorize the exercise of certain authority by a private agent—the Comptroller General, here the problem is that the President would plainly be exercising what everyone agrees is legislative discretion. The President can examine the particular configuration of a bill that will become law. Even the law’s proponents admit it allows the President to exercise authority, albeit in their view delegated to him by Congress.

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

Even apart from whatever constitutional problems the Conference Report may have, it poses two serious practical problems. First, the possibility for substantial judicial review of presidential or congressional compliance with the Republican draft is quite high. For example, it seems likely that lawsuits could be brought challenging whether the President has appropriately considered, as the act directs, such things as “the legislative history” or “any specific sources of information referenced in such law or, in the absence of specific references, the best available information” or “the specific definitions contained” within it. At the very least, this requires the President to make some showing that he has done these things to the satisfaction of members of Congress (or at least those disposed to bring a lawsuit in the absence of such a showing.) There are also numerous procedures OMB and each house of Congress must follow that, presumably, could become the basis for judicial challenge to the satisfaction of partisan foes in the other branch. In addition, there may be some questions as whether the President has in fact comprehended the Republican draft’s understanding of the kinds of items he may cancel, such as a “targeted tax benefit.”

The likely prospect of substantial judicial interference with the budgetary process is unsettling. The framers deliberately excluded the unselected federal judiciary from executive budgetary negotiations or deliberations. The Republican draft does not ensure that this exclusion will always be honored. The framers wanted all of the key decisionmakers within budget negotiations to be politically accountable; any budgetary impasse between the President and Congress that the federal judiciary were to mediate or the other would simply diminish the further public’s confidence that the political process is the place to turn for answers to such deadlocks.

Another practical difficulty is with the authorization made by the Republican draft to Congress. The Constitution’s phrase, “impartial judgment,” may be read to allow an official opinion, which may become a part of a budgetary or appropriations measure, on the “appropriation” for which it is a “benefit.” The bill precludes the House or the Senate from taking issue with the judgment of the Joint Committee’s finding. As a practical matter, the very small number of members of Congress to impose their will on the whole body. Although this might have the salutary effect of expediting the passage of the proposed legislation, it forces those members of Congress who disagree with the Joint Committee to express their disagreement only by voting down rather than by the provision to amend a bill that they otherwise would support.

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

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

Very truly yours,

MICHAEL J. GERHARDT,
Professor of Law.

FOOTNOTES

1 U.S. Const. art. I, section 7, cl. 2, 3.
2 Congress of the United States, Joint Committee on Taxation to render

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Professor of Law.

REFERENCES

University Press of Kansas, p. 12, 17.
4 The Federalist No. 58 at 300 (J. Madison) (M. Belof ed. 1987).
5 Congressional Research Service, Memorandum Regarding Constitutional Questions Respecting Bill to Grant Senate Enhanced Rescission Authority over Appropriations and Targeted Tax Benefits, at 16 (January 9, 1995).
8 479 U.S. 714 (1986).
10 1 Supplement 267 (footnotes omitted).
11 Id. at 267 (footnote 9).


Hon. NEWT GINGRICH, Speaker, U.S. House of Representatives, Capitol Building, Washington, D.C.

Hon. ROBERT J. DOLE, Majority Leader, U.S. Senate, Capitol Building, Washington, D.C.

DEAR MR. SPEAKER AND MR. MAJORITY LEADER: I understand an agreement has been reached between Republican negotiators on “bipartisan veto” language. Although we have not seen a draft of the agreement to determine the extent to which the judicial may be affected, I did not want to delay communicating with you. The judicial had concerns over some previous versions of the legislation that were considered by the House and Senate. These concerns could also apply to the version which agreement was just reached, depending on how it is drafted.

The judiciary believes there may be constitutional implications. The President is given independent authority to make line-item vetoes of its appropriations acts. The doctrine of separation of powers recognizes the vital importance of the judiciary against interference from any Presi-
Protection of the Judiciary by Congress against presidential power and potential intervention is also evident in the Budget and Accounting Act of 1921, which ensures that the financial affairs of the Judiciary be insulated from political influence by the President and his staff. Prior to this Act, the Judiciary's budget was controlled by the Executive Branch, particularly in light of the fact that the United States, almost always through the Executive Branch, has had more lawsuits in the Federal courts than any other litigant. The integrity and fairness of our Federal Courts are not endangered by the potential of Executive Branch political influence.

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

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

Sincerely,

Leonidas Ralph Mecham,
Secretary.

JUDICIAL CONFERENCE OF THE UNITED STATES,

Hon. Orrin G. Hatch, Chairman, Committee on the Judiciary, U.S. Senate, Dirksen Office Building, Washington, D.C.

DEAR SENATOR HATCH:

On behalf of the Judicial Conference of the United States, I am pleased to respond to your request for the Judicial Conference's views on an amendment to the Dole Substitute to S. 4. The amendment would require all appropriations of the Judiciary to be enrolled in one bill.

The Judiciary believes the amendment is critical to ensure the independence of the third branch. Without the amendment, each appropriated line item within the Judiciary would be a separate bill. The Executive Branch would have the power to decide which activities of the Judiciary it did and did not fund. Such power over individual items raises the possibility that the Executive could seek to influence the outcome of litigation by selective vetoes or could try to retaliate for unwelcome decisions. The Executive is the major litigator in the federal courts.

The doctrine of separation of powers recognizes the extreme importance of protecting the Judiciary against inappropriate Executive Branch interference. This is reflected in the Constitution, which protects the tenure and salaries of Article III judges. It is also evidenced in the Budget and Accounting Act of 1921, which ensures that the financial affairs of the Judiciary be insulated from political influence by the President and his staff. Prior to this Act, the Judiciary's budget was controlled by the Executive Branch. Now, by law, requests for Judicial Branch appropriations must be submitted to the President and transmitted by him to Congress "without change". This protection needs to endure.

Control of the Judiciary's budget rightfully belongs to the Congress and not the Executive Branch political influence. This amendment would ensure that the integrity and fairness of our Federal Courts are not endangered by the potential of Executive Branch political influence.

We do not want our citizens to ever think that they are back in the position of the Colonists in 1765 who separated from England in part because of their perception, as Jefferson stated in the Declaration of Independence, that the Executive "has obtruded his influence by refusing his assent to laws for establishing Judicial powers. He has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries."

Sincerely,

Gilbert S. Merritt, Chairman.

Mr. MOYNIHAN. Mr. President, I believe I have two moments. I yield them to whichever Senator wishes to use them. I thank the Chair.

Mr. DOMENICI. Mr. President, I suggest that the PRESIDING OFFICER call the roll.

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

Mr. DOMENICI. Mr. President, I believe it is time.

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

Mr. DOMENICI. Mr. President, I believe this is the time.

The PRESIDING OFFICER. Mr. DASCHLE, that is fine.

Mr. DOMENICI. Mr. President, I can do it even though time is set.

Mr. DASCHLE. We can do it.

Mr. DOMENICI. Mr. President, I ask unanimous consent that the distinguished minority leader be permitted to speak for 10 minutes, after which the 15 minutes that I have follow, and after that we proceed to a vote on or in relation to the Byrd amendment.

Mr. DASCHLE. The PRESIDING OFFICER. Is there objection?

Mr. STEVENS. Reserving the right to object.

Mr. DASCHLE. Mr. President, I would be more than happy to keep my remarks to fewer than 5 minutes. So perhaps if it would work, we can still try to keep the time. I know a lot of people are scheduling their time for the vote. I will be happy to limit my remarks to no more than 5 minutes, and perhaps if it would work, we can still try to keep the time.

Mr. DOMENICI. Mr. President, I yield up to 5 minutes of my 15 minutes to the distinguished minority leader so we keep the time as agreed.

Mr. DASCHLE. Mr. President, thank the manager of the bill.

Mr. President, let me begin by acknowledging the masterful presentation made by the distinguished Senator from West Virginia. No one knows this issue better than he does. No one has studied constitutional law more carefully than has he. He has raised issues today of constitutionality and the balance of power with a clarity of vision and a depth of knowledge that every Senator ought to carefully consider.

His motion certainly would lead to a more thoughtful approach, in my view. The Byrd motion is one that should be supported by all Members of the Senate. It constitutes the only assurance that the President will not amend a bill similar to S. 14, a bipartisan bill that was debated very carefully on the Senate floor a little over one year ago. It was sponsored by Senators DOMENICI and E XON and cosponsored by the majority leader, and granted out of the Budget Committee and the Governmental Affairs Committee. It does what the distinguished ranking member of the Appropriations Committee has indicated it would do—maintain the proper relationship between the role of Congress as well as the responsibilities of the President.

I believe it has three major advantages, and I want to touch very briefly on each of these advantages. This plan grants the President equal opportunity for the President to examine tax expenditures as well as appropriations measures. The Republican plan, constituted in the conference report, does not allow the President to review either the special-interest tax breaks that are all too often considered in the Senate floor. It applies only to those that benefit fewer than 100 taxpayers. Frankly, there are not many provisions that apply to 100 or fewer taxpayers. The Joint Tax Committee determines which breaks can be canceled. I believe that in many cases that alone ought to give us pause. Under S. 14, the President has the opportunity to more broadly apply the powers to examine all expenditures in a more careful way, not only on appropriations bills but also with regard to tax expenditures.

Second, we protect majority rule, which is a central principle of democracy. S. 14 requires a congressional majority to approve the cuts proposed by the President. Under the report, the President can prevail with the support of only one-third of either House of Congress. So, clearly, we abrogate the concept of majority rule. We certainly would not permit a minority to hold a majority hostage in cases like this.

Clearly, S. 14 is constitutional, as the distinguished ranking member and former chairman of the Appropriations Committee has so eloquently described it. In ways this amendment has enlightened us as to the problems with the conference report. The alternative that he presents avoids these problems by requiring Congress to vote to approve Presidential rescissions. Congress should not approve a bill subject to court challenge and, clearly, the conference report will be challenged in court.

So, I believe, Mr. President, the motion of the distinguished Senator from West Virginia is important to both worlds. It gives the opportunity for the President to apply additional scrutiny to items in legislation which may be endangering the potential of Executive Branch political influence.
opportunity to apply that scrutiny both to tax expenditures as well as appropriated spending. It allows us to retain major rule and preserves the balance of power. It avoids constitutional questions that will certainly be raised as soon as this legislation would be enacted, and it is effective immediately.

We do not have to wait for the end of this year. We do not have to assume that we have to wait until the next term to get this done. We can do this now. We can provide authority to the President to use this power to be utilized. It allows him to do it now. We can look between now and the end of the year at the ways in which this might be utilized. This will allow us more opportunity to examine whether or not this approach is an appropriate way with which to assure additional scrutiny of spending and tax breaks in the future.

So I applaud the work of the Senator from West Virginia and others who have brought us this opportunity. I think it is important. It is critical that we carefully consider the constitutional questions that the distinguished Senator from West Virginia has raised. I hope our colleagues will support this motion to reconsider.

Mr. DOMENICI. Mr. President, with the minority leader on the floor, I wonder if it might be in order for me to ask unanimous consent that the yeas and nays be ordered on the Domenici motion to table the underlying amendment. I ask unanimous consent for that.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. DOMENICI. I yield 5 minutes of my time to Senator STEVENS.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

Mr. DOMENICI. Mr. President, I call the attention of the Senate to the very basic provision in this bill. It says in section 1021(a), “Notwithstanding the provisions of part A and B, and subject to this part, the President may, with respect to any bill or joint resolution that has been signed into law pursuant to article I, section 7, of the Constitution of the United States take the action under this bill.”

What we in fact under this bill are doing is giving the President the authority, in effect, to impound moneys that we have given him authority to spend. And we have the right to take that notification of any cancellation that he sends to us and send him, in effect, for giving we intend for you to spend those moneys. He may veto that second bill if he wants. But in the first instance, we are not giving the President any authority to change the law. We are telling him he can cancel for his veto if he wants, but that the cancellation would reduce the Federal budget deficit, not impair essential Government functions, and not harm the national interest.

The issue here is whether the Congress has the right to delegate to the President the authority to not spend money. This is not a violation of separation of powers or a violation of the presentation clause of the Constitution. We have given the President, under this bill, the authority to cancel—that is, to not spend—certain moneys Congress otherwise would have directed the President to spend.

I want to make sure people understand that after the bill is sent to the President, which the President may sign, reject, or let it take effect without his signature under article I, section 7, of the Constitution. if, and only if, the President signs the bill into law, then under this bill the President is given the delegated authority from Congress not to spend certain portions of the money that he cancels according to the provisions of the bill.

I have heard the concept of many of the Senators, but I want to make sure that we all understand this is no different from giving the President the discretion not to enforce a particular law under certain circumstances or to decide, when based on specific criteria, to impose or to lift an import duty. We have done that before. This conference report has no Chadha problems, based on the Supreme Court decision in the Chadha case. Congress is not going to be given the power to legislatively overturn a Presidential decision with regard to a veto or implementation of a law.

We have the power to take action for the second time after the President uses his authority under this bill to impound or cancel moneys and, in effect, put them into the track where they will reduce the deficit. We can pass a second bill. The President would veto that. He has no authority under this bill to deal with that second proposal. If we pass such a bill and direct the President to spend money he otherwise would not have, if he has the authority to override his veto; in effect, mandate him to spend the money as we have said to do so on two occasions.

But I urge Senators not to refer to this as some action to give the President the authority to change a bill before it becomes law or to change in any way legislation that does not affect dollars. He only has the authority to, in effect, cancel the spending of dollars under certain circumstances that, while the circumstances are clearly limited, the scope of the authority is very broad.

Mr. DOMENICI. Mr. President, first, let me add to my brief comment a while ago about Presidents who might abuse this power because a lot has been said about how this might change the balance of power.

I remind every Senator that there is nothing in this bill, limited to appropriation that we have to appropriate money that the President asks us for. You see, if a President decides to be totally arbitrary about this, the Congress of the United States does not have to appropriate money for things the President wants. That is our balance. There can be no money spent unless we appropriate it.

So, in addition to all of the other things the President needs of a Congress and a Senate under the Constitution, those are all our powers that he needs to help him do his job.

In addition, he needs dollars to run the Government of which he is the Chief Executive, and we have to appropriate those dollars.

I am not worried about the balance of power because, obviously, Congress will not move to table the President’s power if this gets into an arbitrary match of power, and I believe it is going to be used to the betterment of our country, our people, and the taxpayers.

With reference to the motion we are going to vote on, let me be very brief and very forthright. The amendments Senator Byrd has offered show that I am going to move to table shortly will return the line-item veto to conference. It took us 6 months to reach a compromise on the line-item veto. To send it back with instructions is to kill it because what is proposed to be instructed cannot pass the Senate and cannot pass the House.

This motion calls us to cast aside the compromise embodied in this conference report. It calls on the conferees to adopt an expedited recessions approach instead. Both Houses rejected the expedited approach. Senators over the past year, during the Senate’s consideration of the line-item veto, we voted 62 to 38 to table the expedited approach which the distinguished Senator from West Virginia, Mr. Byrd, is asking us to instruct the conference committee to do. I urge Senators to instruct the conference committee to consider this. It is not something that will happen, and I believe that is what is intended if these amendments were adopted.

I support the compromise, and it is now time to vote on the conference report on the line-item veto. A vote in favor of the motion will be a vote to defeat the line-item veto conference report before us. I urge Senators not to do that.

So we will all have a chance to make sure we do not send this to conference, which I yield back the remaining time that I have, and I yield the floor.

I move to table the underlying amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the motion to recommit the conference report. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

The result was announced—yeas 58, nays 42, as follows:
The American people began to change the face of Congress in the last election. And of those newly elected, a number of citizens are probably responsible individuals. The President recently stated: the American people can wield in the fight against pork-barrel spending. It is more effective than a line-item veto can ever be.

The line-item veto itself is not a cure-all. It will not result in a balanced budget. There is not enough pork that can be deleted from the budget to accomplish that. But, if properly exercised by the President, it can make it easier to get to balance.

Make no mistake about it, this bill will shift a great deal of new power to the President. I do not believe that Parliament will give the power to the President that he needs. The President is great. He can use the veto power to reward or punish Members of Congress, depending upon whether they support or oppose other policies of his administration.

Most Presidents, however, will be responsible about how they use this awesome new power. That is because all eyes of the American people will be on the President if he abuses it, or if he fails to properly delete wasteful spending from appropriations bills. By signing this bill into law, President Clinton will be accepting significant new responsibilities from the American people to safeguard their hard-earned tax dollars. I have no doubt that they will hold him accountable if he fails to use the new power wisely.

Mr. President, just a few weeks ago, the nonpartisan taxpayers' organizations, Citizens Against Government Waste, released the 1996 Congressional Pig Book Summary. The good news is that the organization certified that, in 1995, Congress produced the first pork-free appropriation bill ever—the legislative branch appropriations bill.

Unfortunately, however, not all of the news was good. There is one reason why the line-item veto is still necessary. Citizens Against Government Waste found a total of $12.5 billion in pork-barrel spending in eight other fiscal year 1996 appropriations bills that have been signed into law. Among the projects that the group identified were rice modeling at the Universities of Arkansas and Missouri; shrimp aquaculture; brown tree snake research; the International Fund for Ireland; and the Iowa communications network, to name a few.

These are the kinds of projects that are likely to be the target of a line-item veto, projects that are typically
hidden away in annual spending bills. They’re enough to demonstrate the ability of certain legislators to "bring home the bacon" and curry favor with special interest groups back home. But, they don’t amount to enough to cause Congress to abandon the line-item veto or prompt the President to veto a bill and bring large parts of the Government to a standstill.

The line-item veto is designed to bring accountability to the budget process, and forcing the President to accept wasteful and unnecessary spending in order to protect important programs, it puts the onus on special interests and their congressional patrons to prove their case in the public arena. It subjects projects with narrow special interests to a more stringent standard than programs of national interest. The special interests would have to win a two-thirds majority in each House. Programs of national interest would merely require a simple majority.

That is the shift in the balance of power which the line-item veto represents. It is a shift in favor of the taxpayers, and that is why I intend to support it. If the Government were running deficits, the taxpayers might be willing to tolerate some extra projects. But the Government is running annual deficits that are far too high, and there is no extra money to go around. There is not even enough to fund more basic needs.

Mr. President, when you find yourself in a hole, the first rule of thumb is to stop digging. Let us begin climbing out of the hole we have dug for ourselves and future generations. Let us pass the line-item veto.

EMERGENCY SPENDING PROVISIONS

Mr. FEINGOLD. Mr. President, will the Senator from Arizona yield for a question?

Mr. President, the Senator from Arizona and I decided in his opening statement on this measure that the emergency spending reforms he and I were able to include in the Senate-passed version were dropped in the conference committee version of this line-item veto measure.

Our provision limited emergency spending bills solely to emergencies by establishing a new point of order against nonemergency matters, other than rescissions of budget authority or reductions in direct spending. This bill can look back at the day we passed the emergency spending reforms and say, "We should have done this long ago." It is not balanced or deficit-neutral, but it is a major step towards balance.

The provision also featured an additional enforcement mechanism to add further protection by prohibiting the Office of Management and Budget from adjusting the caps on discretionary spending, or from adjusting the sequen-
ter process for direct spending and receipts. The provision did for an entire emergency appropriations bill if the bill included extraneous items other than rescissions of budget authority or reductions in direct spending.

I know he shares my disappointment that those provisions were dropped. Is it his understanding that though the emergency spending provisions were dropped from the final conference version of the line-item veto measure, we have been assured by the Budget Committee staff that they will work with our own staffs to bring this matter back on an appropriate legislative vehicle?

Mr. MCCAIN. Mr. President, that is my understanding, and I look forward to working with the Senator from Wisconsin and the Budget Committee staff to address any technical concerns there might be with the emergency spending provisions.

Mr. FEINGOLD. I thank my friend from Arizona. As we consider ways to empower the President to veto unjustified spending through this new authority, it only makes sense to enact reforms that prevent those abuses from passing in the first place.

The emergency spending reforms that Senator McCain and I introduced as legislation, and included in S. 4 as it passed the Senate, did just that. Our emergency spending legislation would have ended this House by an overwhelming vote and I am hopeful that we will soon be able to overcome the resistance to this provision and have it enacted into law as well.

And though I regret our reforms were not included in this proposal, I look forward to working with the Budget Committee and my good friend from Arizona to iron out any drafting problems, and find an appropriate vehicle for this needed reform.

Mr. FRIST. Mr. President, I rise today in strong support of the line-item veto. No single legislative procedure will do more to curb wasteful Government spending than this powerful legislative tool. For years, Washington has talked without acting. I am proud to be a Member of the Congress that will make the line-item veto a reality.

For years, the Federal Government has demonstrated an appalling lack of fiscal responsibility. Today, our national debt is over $5 trillion—more than $19,000 for every man, woman, and child in America—and is growing at a rate of $600 million a day. Entitlement spending—the two-thirds of the Federal budget that is growing so fast that it will consume all of our tax dollars in just over a decade. Meanwhile, the other third of our budget, discretionary spending, is riddled with unnecessary pork-barrel projects. Basically, it is too easy to spend and too hard to save here in Washington. We owe it to the American taxpayer to impose fiscal discipline on Federal spending habits.

The line-item veto reforms our institutional tendency to overspend. Here’s how it works. The President already can veto spending bills passed by Congress. S. 4 gives the President the authority to veto specific spending items—including appropriations, new entitlements, and limited tax benefits. The President’s cancellations will stand unless Congress passes a bill restoring the spending and providing the two-thirds support necessary to override any additional vetoes.

Some people argue that S. 4 shifts too much power from Congress to the President. However, I believe the President needs a tool to help control Congress’s overspending of the taxpayers’ money. We must give our Chief Executive the power to strike discreet budget items which do not serve the national interest. In fact, I am so convinced that the line-item veto is the right thing to do that I am willing to give this power to a President of another political party.

While the line-item veto alone cannot balance our budget or pay off our national debt this one legislative tool could perform radical surgery on the federal spending. Federal Government General Accounting Office [GAO] estimated that a line-item veto could have saved $70 billion in wasteful spending during the last half of the 1980’s. That $70 billion could provide a $250 tax cut or a $500 raise for every family for 7 years. Taxpayer watchdog group Citizens Against Government Waste identified an additional $43 billion in procedural pork spending in the last 5 years, spending which circumvented normal budget procedures. Imagine how a line-item veto could have saved a significant portion of that money.

But we don’t need the GAO or a taxpayer watchdog to tell us that the line-item veto works. We only need to ask the 43 of our Nation’s Governors who use this tool on a regular basis. In fact, when President Clinton was Governor of Arkansas, he used the line-item veto 11 times. If the States can control spending and balance their budgets, the Federal Government should follow their example.

Mr. President, I look forward to the day when I can tell my three sons, my fellow Tennesseans, and every American that they have inherited a country free of debt. I look forward to the better job opportunities and higher the standards of living they will enjoy. And at that moment, I hope I can look back at the day we passed the line-item veto as the day a bipartisan group of legislators took a significant step down the road to fiscal accountability. I strongly urge my colleagues to support this bill.

THE LINE-ITEM VETO: STILL AN ILL-CONSIDERED PROPOSITION

Mr. PELL. Mr. President, when the line-item veto was last before us, I said that I found myself in opposition both on philosophical as well as practical grounds.

I must be quick to acknowledge that my opposition on philosophical grounds have been met. The conference deserves credit for replacing the cumbersome and unworkable scheme of separate enrollment in the Senate version of the
legislation, with at least a workable plan for enhanced rescission authority. But my underlying philosophical reservation remains. As I said when the bill was last before us, I simply believe that Congress should be extremely busy using its power of the purse to the executive branch. I hold this view on the basis of my Senate service under eight Presidents of both parties during my 35 years in the Senate, and notwithstanding the cordial relationships I have had with all of them.

I continue to believe that the executive branch, which under our Constitution, quite properly is a separate power center with its own agenda and its own priorities, inevitably will seek and use any additional power to achieve its objectives. And the pending grant of veto power over specific items, I fear, will surely give even the most benign and well-motivated Chief Executive a new means for exercising undue influence and coercion over individual members of the executive branch.

I hold this view, notwithstanding my loyalty and respect for President Clinton, who I know would use such a grant of authority wisely. But it is the balance of institutional forces that must be considered. This is in this connection that we have been well served by the erudition of the senior Senator from West Virginia [Mr. Byrd], who has reminded us so eloquently of the need to protect the legislative prerogatives with which I commend him for his great service to the cause of constitutional government.

Mr. LEAHY. Mr. President, I have a number of serious concerns and questions about the conference report on the line-item veto, S. 4.

First, the line-item veto encourages minority rule by allowing a Presidential-item veto to stand with the support of only 34 Senators or 146 Representatives. This is not majority rule. We are reversing the democratic supermajority requirements, which I thought were dismissed during the balanced budget amendment debate.

By imposing a two-thirds supermajority vote to override a Presidential-item veto, the line-item veto undermines the fundamental principle of majority rule. Our Founders rejected such supermajority voting requirements on matters within Congress' purview.

Alexander Hamilton described supermajority requirements as a poison that serves to destroy the energy of the government, and to substitute the pleasure, caprice, or artifacts of an insignificant, turbulent, or corrupt junto to the regular deliberations and decisions of a respected majority.

Such supermajority requirements reflect a basic distrust not just of Congress, but of the electorate itself. I reject that notion.

Moreover, supermajority requirements in any line-item veto bill is overkill. I am afraid that this bill will sacrifice many worthy projects on the altar of supermajority votes.

But supermajority power is not needed to strike wasteful line items. The purpose of any line-item veto bill is to give the President the power to expose wasteful line items to the sunlight of a congressional vote. A veto to overkill any wasteful line item while still allowing Members to convince their colleagues to vote for a worthy line item.

In addition, these supermajority requirements hurt small States, like my home State of Vermont, by upping the ante to take on the President.

Under the line-item veto, Members from small States would have to convince two-thirds of Members in each House to override the President's veto for the sake of a project in another Member's district.

With Vermont having only one representative in the House, why would other members risk the President's wrath to help us with a project vetoed by the President?

Another question mark under this conference report is tax breaks.

Under the bill, the President has authority to veto only limited tax benefits, which are defined as providing a Federal tax deduction, credit or exclusion to fewer than 100 beneficiaries.

Any accountant or lawyer worth his or her high-priced fee will be able to find more than 100 clients who can benefit from a tax loophole. If more than 100 taxpayers can figure out a way to shelter their income in a tax loophole, the President would not be able to touch it. The bigger the loophole in terms of the number of people who can take advantage of it, the safer it is.

The definition of limited tax benefit sounds like a tax loophole in itself.

Would the President have line-item veto authority over the capital gains tax cut described in the House Republican Contract With America? It certainly is estimated to lose revenue. The Joint Committee on Taxation has estimated that the contract's capital gains tax cut would lose almost $32 billion from 1995 to 2000. Yet somehow I think a capital gains tax cut would fall beyond the scope of a limited tax benefit under this legislation.

Why do we not quit this shell game. Just state in plain language that the President has line-item authority over all tax expenditures.

I believe the President would tread carefully when expanding the fiscal powers of the Presidency. The line-item veto will change one of the fundamental checks and balances that form the separation of powers under the Constitution—the power of the purse.

The line-item veto hands over the spending purse strings to the President, whose cuts would automatically become effective unless two-thirds of both Houses of Congress override the veto.

The President would have no burden of persuasion while a Member would have the Herculean task of convincing two-thirds of his or her colleagues in both Houses to care about the vetoed project.

It is truly a task for Hercules to override a veto. Just look at the record—the more than 2,500 Presidential vetoes in our history, Congress has never been able to override a Presidential veto.

As noted so well in The Federalist Papers: "the accumulation of all powers, legislative, executive, and judicial, in the same hands, whether of one, a few, or many, and whether hereditary, elective, or appointive, may justly be pronounced the very definition of tyranny."

Let us not try to score cheap political points at the expense of over 200 years of constitutional separation of powers.

Mr. REID. Mr. President, I rise in opposition to the proposed Line-Item Veto Act. The conference report does more to upset the balance of powers than any legislation this body has considered this year. It is about churning expenditures. It is body abrogating constitutional responsibility. It is about ceding unbridled spending authority to one individual in one branch of the Government. It should not be called the Line-Item veto. It should be called the Presidential Spending Empowerment Act. It grants unprecedented amounts of spending power to one individual. Proposers attack discretionary spending as though this were the tax rate on only 10%. They know better. Discretionary spending becomes a smaller part of the Federal budget every year. The days of pork-barrel spending have long since passed. This concept is replaced by yielding the President authority to punish his enemies.

This is an invitation to unfettered politicization of the Federal spending process. It is exactly this kind of undue influence that the founders sought to avoid through separation of powers doctrine. It does not take the imagination of Machiavelli to see how this power could be used for nefarious purposes. This is particularly true in an election year. Look at the possible scenarios that could be in store. This would give a future incumbent President quite a political weapon. Perhaps it could be used to entice the endorsement of Members from key primary States. A President could agree to not cancel an item of new direct spending if the Member endorsed his candidacy. Conversely he could punish a Member for deciding not to support him. Even in a non-election year, this unfettered power could be unleashed for the rawest of political purposes. Why? Because this legislation creates an implied threat against all Members of Congress. This implied threat is vested in one politician. It can be exercised on any piece of legislation this body considers.

The conference report is not what is said, it is what is not said. It attempts to remove politics from the process. Unfortunately, it will have the exact opposite effect that its
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supporters intend. It injects the rawest form of power politics into the Federal spending process.

The conference report creates enormous political arsenal and endows it in one individual. Its proponents say it will address wasteful spending. But it's really an axe that can bludgeon any legislator who dares to disagree with a President. This is not just about concentrating unprecedented amounts of power in one individual. The judicial branch of government is obviated. It is about giving that individual a lethal political weapon. We are giving that individual license to use this weapon in whichever manner he sees fit.

Proponents of the conference report say this measure can be used as a surgical scalpel. I believe it more closely resembles a hovering guillotine. It is not just congressional spending authority that will be infringed. Our third branch of government, the judiciary, will have its independence placed in jeopardy. I would encourage all Members to read an excellent piece on this issue in today's New York Times. It sets out some interesting arguments as to why the legislation is opposed by the judiciary. The potential for conflict is obvious. All of us, at some point or another, have likely found ourselves in profound disagreement with a judicial ruling. But we realize there is a process in place for disagreeing with clear-headed decisions. We introduce legislation, hold hearings, and attempt to persuade our colleagues of the proposal's merits. None of us, individually, has the ability to influence a judicial decision we disagree with.

I believe Judge Gilbert Merritt is correct. The potential for conflict is obvious. All of us, at some point or another, have likely found ourselves in profound disagreement with a judicial ruling. But we realize there is a process in place for disagreeing with clearly wrongheaded decisions. We introduce legislation, hold hearings, and attempt to persuade our colleagues of the proposal's merits. None of us, individually, has the ability to influence a judicial decision we disagree with.

The President's line-item veto endows in one individual the tools with which to immediately demonstrate displeasure. Why don't we simply eliminate the measure? None of us, individually, have likely found ourselves in profound disagreement with a judicial ruling. But we realize there is a process in place for disagreeing with clearly wrongheaded decisions. We introduce legislation, hold hearings, and attempt to persuade our colleagues of the proposal's merits. None of us, individually, has the ability to influence a judicial decision we disagree with.

This political weapon can be exercised in many different ways. The executive branch may be litigating one of its policies in Federal court. This happens all the time in every administration. Consider the conflict that could arise if the administration receives an unfavorable ruling from a particular court. Now, the President could employ the power of the bully pulpit or appeal to Congress to handle the matter legislatively. Alternatively, and more worryingly, he could also excise the appropriation for that particular court. This is not meant to cast aspersions on our future Presidents. It merely reflects the political reality that the Framers recognized when they wrote the Constitution.

Process for considering item vetoes binds this body to new rules that are overly burdensome and unduly restrictive. It will be very disruptive to the consideration of substantive legislative matters. We don't even know how this will play out and we are today being asked to accept a 10-hour time agreement. A large number of line-item vetoes may deserve debate. Are we all willing to enter into a 10-hour time agreement today? What kind of chaos are we binding ourselves to?

There is a great deal of thought and consideration that goes into writing an appropriations bill. Typically, the legislation is written with the White House throughout this process. It is not as if the administration reads appropriations bills for the first time upon their passage. Administration officials are actively involved in every step of the way. Why did the White House fail to recognize how the administration to write the measures and schedule up or down votes in both chambers?

Presidential veto of targeted tax benefits was a key feature of the Senate-passed bill. The conference report attempts to define tax benefits by counting the number of beneficiaries. At best, this is disingenuous. A tax benefit is defined as an income tax deduction, credit exclusion or preference to 100 or fewer people. The conference report at-endments recently voted to approve.

I support a line-item veto because it will play out and we are today being asked to accept a 10-hour time agreement today? What kind of chaos are we binding ourselves to?

No single procedural change can do that.
priorities of this country. Now, more than ever, waste in one program will require cuts in more deserving areas.

So we must do all we can to change the incentive to smuggle such spending into appropriations bills in the first place, or to give the President the power to cut it out once it gets there.

Mr. President, the version of the line-item veto that I have consistently supported is not the one before us now. Nevertheless, I will vote for this line-item veto plan today, because I believe that it can be a useful check on wasteful spending, at a time when we must subject every dollar we spend to the most careful scrutiny.

Mr. President, I want to take a few minutes to explain the difference between the version I have consistently supported—the one, I must add, that we passed out of the Senate last year—and the version here before us today. I have long held that separate enrollment, an approach, in contrast to the enhanced rescission plan before us now. But what do those fancy titles mean?

The separate enrollment approach to the line item veto is the one that I have supported, and the one that I think most people have in mind when they think of a line-item veto. Quite simply, separate enrollment requires that the Congress take each item in the spending bills we pass and send them to the President separately, instead of lumped together as we did it now.

We used to send individual spending items to the President separately, back before the Civil War. I believe that the separate enrollment approach would restore a relationship between Congress and the Executive that was upset by the practice of lumping those items together. To that extent, it would be less disruptive of the constitutional relationship between the branches of our Government.

The way we do it now, we send the President every item for national defense, for example, in a single spending bill. If the President believes that there are too many tanks, or too many missiles, he must veto the entire national defense bill to cut out the spending that he doesn’t want.

We write bills that way on the bet that the President will accept additional spending as the price of getting our national defense or other basic needs paid for.

And, we must admit, Mr. President, we write bills that way because it serves the needs of individual Members of Congress—on their own merits, in the cold light of day, could not muster a majority vote—to have those special projects pulled through the process by the locomotive of essential legislation.

But there is a more fundamental objection. The separate enrollment approach to the line item veto is the one that least disturbs the constitutional relationship between the branches of our Government. I think that route.

Mr. SMITH. Mr. President, I rise in strong support of the line-item veto bill before the Senate today, and urge my colleagues to pass this overdue measure. As a long-time opponent of pork-barrel spending, I am glad we are taking this first small step toward fiscal sanity.

When I attend a town meeting, or hold a briefing on the Federal budget, I often hear a common sentiment: Why does Congress want to change Medicaid education or whatever, when we are spending $5 million on Hawaiian arts and crafts? It is a question that cannot be answered. Pork-barrel spending may constitute a relatively small portion of the overall budget, but it represents a very symbolic part of the budget. If Congress cannot cut the little spending items, how on Earth can we make the difficult decisions on the larger programs?

Will the line-item veto balance the Federal budget or control spending? But it will help restore discipline to our budget process. It is no secret that special projects and narrow interest provisions are often included in large spending
BYRD, the line-item veto legislation in my view. the right way to ensure deficit reduc-
tion. This conference report on the line-item veto bill is not wasteful spending. But this conference 
for their efforts and commitment. Especially for his attention to the line-item veto as it may affect future tax legislation. I want to thank Senator Roth, the able chairman of the Committee on Finance. Finally, I want to thank all those with whom I have always joined
out entire dollar amounts in appropriation bills. He may not merely reduce a dollar amount; He may only cancel it entirely. With this line-item veto, a responsible President will attack and cancel out latent direct-spending pro-
vissions that would increase future deficit. Thus, spending future deficit increases before they even begin: first, by eliminating a wasteful provision, and second, by dedi-
cating any savings from operation of the line-item veto to a special lockbox for deficit reduction. The bill will give the President—who has a national con-
stituency with a national interest—the tool he needs to cut projects that serve a narrow constituency with a special interest. The legislation before the Senate today allows the President to veto appropriations, targeted tax pro-
visions, and new entitlement spending. Any of these provisions, if passed separa-
rately, are now subject to a President.
veto override requiring two-thirds in both chambers. Thus, the overall bill is a natural and simple extension of that constitutional power. Projects worthy of scarce Federal tax dollars should stand or fall on their own merit, not on the merit of a larger unrelated bill.
Mr. President, I have supported and cosponsored line-item veto legislation for more than a decade. It has been a long and arduous fight. I, for one, am glad that the fight is finally over. I commend my colleagues—Senator MCCAIN and Senator COATS—for their hard work on behalf of this landmark legislation. This line-item veto bill be-
fore the Senate today will certainly stand the test of time.
Mr. ROCKEFELLER. Mr. President, I am a proponent of responsibly reducing the deficit, as are many of my col-
leagues. I, too, want to eliminate wasteful spending. But this conference report on the line-item veto bill is not the right way to ensure deficit reduc-
tion. Responsible fiscal management in my view.
As articulated so poignantly by my colleague from West Virginia, Senator BYRD, the line-item veto legislation raises many constitutional problems and it substantially alters the balance of power devised by the Framers of our Constitution. Before supporting such a dramatic change in the balance of power, we need to examine it in light of what it really means in practice.
Giving a President broad power to cut discretionary spending concerns me in theory, but it troubles me even more to think about its potential effects in practice. A President may hastily veto substantive provisions of a spending bill, which he considers wasteful, but which really are essential programs for States or regions. One person’s percep-
tion of waste or pork may be another person’s funding for roads, schools, needed medical care, or rural hospitals. On a President could abuse a line-item veto as a political tool to intimidate a particular Member or groups of Mem-
bers.
A specific example is the recent history of funding for the Appalachian Regional Commission [ARC]. Recent Re-
publican Presidents sought to eliminate the Appalachian Regional Commission [ARC] from the budget, but a bipartisan group of Congressmen main-
tained this important program to pro-
mote economic development in some of the poorest counties of our country. The ARC provides basic funding for infra-
structure and economic develop-
ment.
In representing West Virginia’s interest, I do not believe that Congress should give any President free range to cut discretionary spending. Under the line-item veto, a President could veto spending for the ARC, or other discre-
tionary programs ranging from high-
way projects to housing programs. It is important to note that the present system already offers a way for Congress to save money. If the President is 

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in our tireless efforts to stamp out the Government waste of taxpayer capital. This is a great day indeed. I urge all of my colleagues to join in support of this conference report on the line-item veto.

Mrs. MURRAY. Mr. President, I take the floor to oppose the so-called line-item veto legislation before us today. I regret I cannot support this conference report, but unfortunately this report is careless, highly questionable and possibly unwise. Mr. President, I support the line-item veto proposal submitted by Senator BYRD. His expedited recission proposal was well-written and made good common sense, but unfortunately, it was not accepted by the Senate.

I know all too well the abuse that can arise through broad, sweeping line-item veto authority. Mr. President, I served in the Washington State Senate prior to coming to the U.S. Senate. My home State arms its executive with line-item veto authority, and while serving in the State legislature I witnessed, first hand, the horse trading that results by giving the State's executive this authority.

In my home State, the line-item veto does not work as intended. Rather, it encourages more spending. It puts legislators in the position of having to accept the Governor's priorities in order to make sure their legislative priorities are not vetoed by the Governor. As you know, Mr. President, this debate essentially was spawned out of our desire to reduce Government waste and balance our Nation's budget deficit. I do not think there is a single Member in this body that does not want to reduce the Nation's budget deficit. However, I have great difficulty turning over my responsibilities and Congress' fiscal responsibilities to the executive branch. Mr. President, the line-item veto is a budget gimmick, and it simply puts the power of the purse from Congress to the President.

Since 1993, we have cut the Nation's budget deficit in half. This is commendable work. However, it was difficult work that required tough decisions. Congress and the Clinton administration chose to reduce and cut hundreds of Federal programs. This was not easy, but it is what we were elected to do. We will get our fiscal house in order once we set our minds to it. We do not need line-item veto authority to encourage. We should not shrink from our constitutional responsibilities. We should accept the challenge.

Mr. President, earlier today I listened to the elegant words of Senator BYRD. Senator BYRD is a great orator, respected legislator and an excellent teacher—especially when it comes to the constitutional issues surrounding the line-item veto. I hope my colleagues listened to his words, because there are some real constitutional issues that need to be addressed because of this legislation.

This legislation disrupts the delicate balance of powers laid out by our Founding Fathers. It shifts an enormous amount of power to the President of the United States—directly conflicting with Congress' constitutional duties. And, as written, this legislation gives the President and a one-third minority in one House the power to veto legislation Congress approved. It turns the idea of checks and balances on its head.

Mr. President, I also have grave concerns with the language pertaining to targeted tax benefits. This language is so broad and so sweeping that ultimately prohibits the President from vetoing new targeted tax benefits. If we want to grant the President a line-item veto, let us do at least that the right way. Let us at least let the President strike new tax expenditures.

Moreover, I urge all my colleagues from small States to read this legislation carefully, because as it is written, the President has the power to strike very specific language including charts and tables. Mr. President, the President would have the power to strike funding for a single State if an appropriations bill or report includes a chart breaking out spending per State. We know the President is not going to strike funding in just one special manner or with which States. But, what keeps the President from cutting funds in smaller States?

Mr. President, this again reminds me of the horse trading I experienced in my home State legislature. This legislation represents the awkward position of having to protect constitutionally approved legislation from the President's veto pen—legislation that was debated, considered and eventually agreed to by Congress—agreed to in the way our Founding Fathers envisioned the process would work, and the way our constituents expect us to govern. In no way did our Founding Fathers expect the President to unrelieve legislation that was crafted through compromise by both the majority and the minority.

Mr. President, there is a right way to craft this legislation. It should be written clearly and carefully—without ambiguity. We should craft legislation that doesn't exempt specific tax breaks, one that doesn't allow a President to attack entitlements, and one that doesn't hold small States hostage. So, Mr. President, I urge my colleagues to vote against this legislation. The line-item veto is not the solution to our deficit problems. We know what needs to be done to reduce the deficit, and we have done it here on this floor over the past 3 years. We know the line-item veto is not the tool needed to accomplish that goal, but rather, just a feel-good gimmick that puts off the tough decisions.

Mr. FEINGOLD. Mr. President, this issue is not simple, nor is it easy.

If it were, there would be a larger consensus on how we should proceed in this area. I supported the version of S. 4 that passed this body—the so-called separate enrollment approval. Though that legislation was flawed, I was willing to support that experimental line-item veto authority to provide the President with some additional authority to eliminate inappropriate spending.

I do not believe the line-item veto is the sole answer to our problem, or even most of the answer, but it certainly can be part of the answer. The legislation before us today, too, is flawed, but I am willing to give this new mechanism a chance to work, and to see if it can turn over the next several years. Like the version of S. 4 that passed the Senate, this measure also has a so-called sunset clause which terminates the expanded veto authority unless Congress takes action. If the Congress decides, which it may well do, that we have gone too far in delegating authority to the President, the sunset clause will make it much easier to terminate the experiment, if necessary. The burden will be on those who want to retain the authority, Mr. President, in the event that the sunset clause allowed me to support a measure with which I am far from satisfied. Without a sunset clause, Congress would have to pass a bill to repeal the line-item veto authority. It is likely this will put pressure on the President to accept such a bill, and unless two-thirds of the members of both Houses were to override that veto, the President would retain this extraordinary new power.

Mr. President, this again reminds me of the continuing Federal budget deficits. Justifying granting this temporary authority to the President on a trial basis, I do have serious concerns about this proposal, which I want to highlight, and will continue to monitor. Possibly my biggest concern is the effective threshold of two-thirds vote in each House to overcome this new expanded veto authority. That kind of threshold is provided in the Constitution for entire bills, but extending that authority for individual parts of a bill makes it somewhat academic. There are many uncertainties in this new authority that we are providing the President, and no one can anticipate all the potential abuses that might flow from this new authority.

Though we have no experience at the Federal level, those Members who have served in State government may have seen the use of line-item veto authority at the State level. Indeed, much of the support for a Federal line-item veto has come from that experience. But, Mr. President, few other States, if any at all, have witnessed the abuses of line-item veto authority that we have seen in Wisconsin. That abuse has been bipartisan—Governors of both parties have used Wisconsin's partial veto authority in ways it is safe to say no one anticipated when that authority was first contemplated. For example, Mr. President, Wisconsin's current Governor, Governor Thompson, has used the veto authority not only to rework entire laws, but to increase spending and increase taxes.

The two-thirds threshold compounds the uncertainty about possible abuses
by making it that much more difficult for Congress to respond to that possible abuse.

Mr. President, another serious flaw in this measure are the provisions relating to tax expenditures. They are far from the language of the Senate-passed version of S. 4 relating to tax expenditures has been weakened significantly, essentially blunting this authority as a tool for restraining that area of spending that is among the largest and fastest growing, and that includes subsidies to some of the wealthiest individuals and corporations in the world.

Mr. President, tax expenditures contribute greatly to pressure on the deficit, and if any area should be subjected to the scrutiny of line-item veto authority, it is this one. The failure of this proposal to target abuses in this area is a serious flaw, and I regret the special interests that generated some of these abuses in the first place are exempt from this new Presidential authority.

Mr. President, I was disappointed, too, that the emergency spending reforms the senior Senator from Arizona [Mr. McCAIN] and I incorporated into the Senate-passed version S. 4 did just that, and I regret they were not included in this proposal. The provision also featured an additional enforcement mechanism to add further protection by prohibiting the Office of Management and Budget from adjusting the caps on discretionary spending, or from adjusting the sequester process for direct spending and receipts measures, for any emergency appropriations bill if the bill includes extraordinary items other than rescissions of budget authority or reductions in direct spending, or any amendment to an emergency measure, or a conference report that contains an emergency measure.

As we consider ways to empower the President to veto unjustified spending through this new authority, it only makes sense to enact reforms that prevent those abuses from passing in the first place. The emergency spending reform that Senator [McCain and I] included in S. 4 did just that, and I regret they were not included in this proposal. I understand, however, that commitments have been made to revisit this provision in separate legislation. The emergency spending legislation previously passed the House by an overwhelming vote and I am hopeful that we will soon be able to overcome the resistance to this provision and have it enacted into law as well.

Mr. President, the basic structure of this particular line-item veto authority also raises problems. Though it may be less cumbersome than the so-called separate enrollment approach envisioned in S. 4 as it passed the Senate, the new enhanced rescission approach could provide the President with more rescission authority than was intended.

In fact, the shift from Congress to the President in defining the precise material to be vetoed is potentially significant. Instead of vetoing or approving individuals minibills, as under the separate enrollment approach, the President decrees certain actions in fact budget actions which effectively are given statutory authority because they are surmounted only by enactment of a disapproval bill.

The scope of these Presidential decrees are limited by the restrictions set forth in this bill, and though the intent of those proposing this new authority may be clear enough in their own minds, there cannot be one hundred percent certainty about the true scope of this new authority until it is actually put into effect. The unintended or even unimagined consequence of this new authority may be its biggest flaw.

This is just what happened in my own State. It is difficult to argue that the use of Wisconsin's partial veto authority ever intended that a future governor would be able to veto individual words within sentences or even individual letters within words, yet that is precisely what happened. Successive court decisions gradually expanded the partial veto authority for Wisconsin's Governors, to the point that new laws could be created with the veto pen.

Mr. President, should the temporary authority which this measure grants the President be abused in this fashion? Though I do not believe it will, we cannot be certain about what some court might rule in interpreting the restrictions spelled out in the bill. In some instances, the proposal before us allows the President to exercise his new authority based on committee reports or the statements of managers, neither of which have the force of law, and neither of which have ever been the subject of a vote in either House. That is troubling.

I am disturbed, too, by the language in this proposal regarding so-called direct spending. In defining these items, the measure refers to specific provisions of law.

Mr. President, this definition is not at all self-evident. Is a provision of law a numbered section, or can it be an unnumbered paragraph as well? How small a unit of entitlement authority does the proposal intend to expose to the new Presidential authority? For example, if a clause in a sentence defines new entitlement authority in some way, can that clause be canceled without taking the entire sentence with it? And can new entitlement authority be limited by the selective cancellation of one word if doing so meets the other stated formal requirements of the measure?

The proposal does not address that issue. It only mentions the words "specific provision of law" without further definition.

As someone who has seen just how creative a Governor can be with partial veto authority, this is a matter of serious concern to me.

Mr. President, there are a few safeguards built into this proposal that provide some comfort in this regard. As I noted before, the new authority sunsets in 8 years, which means it amounts to an 8-year trial period in which we can monitor this new Presidential authority, and we will. Eight years represents two complete Presidential terms of office, and several election cycles within both Houses, ensuring a diverse set of partisan combinations under which this new authority can be tested, and enhancing the possibility that it will be used under different circumstances and with different ideological intent.

I should be noted that this new authority is established by statute, not as part of the Constitution, thus the measure avoids magnifying these potential problems by making a permanent change to our basic law. To the extent that Congress can selectively control this new authority in subsequent statutes, even prior to the expiration of the proposal before us, the statutory approach to the line-item veto or enhanced rescission authority is much less restrictive than a constitutional amendment.

Nevertheless, Mr. President, we cannot be certain how this proposed authority will be used, no matter how carefully we draft the restrictions on that authority. Those who support this measure bear a special responsibility in this regard. And to that end, should this measure become law, I intend to establish a regular review process to monitor how the new authority is used, how misused, how much deficit reduction is produced, and lost opportunities for deficit reduction.

Though temporary, this delegation of authority is significant, and close and continuing scrutiny is warranted, even necessary.

Mr. President, the debate we have had on this issue for over a year has been instructive for me. For some, the passage of a line-item veto authority for the President will only mean they can scratch it off a list, and move on to another issue. But this issue does not end with our vote, it begins.

We are about to embark on an important experiment. Whether for the benefit of the country and our democratic institutions remains to be seen, but I believe it is an experiment worth performing.

I congratulate the senior Senator from Arizona and the Senator from Nebraska [Mr. Exon] for their leadership on this measure. I thank them especially for their past efforts on behalf of the amendment I offered to clean up the emergency appropriations process.
Though it was not included in the final version of this proposal, I very much appreciated their courtesy, and I look forward to working with them to find another vehicle for that worthy reform.

I yield the floor.

Ms. MOSELEY-BRAUN. Mr. President, our system of government is based on a separation of powers and checks and balances. That is the way the Founding Fathers structured it, and it is a system that has fostered America's greatness for over 200 years. Yet, this bill would fundamentally change and unbalance that system by transferring power from Congress to the President.

Some argue that this bill is unconstitutional. In a letter to Congress, L. Ralph Mecham, secretary of the Judicial Conference, stated that he fears that this bill will violate the separation of powers. He writes, "The doctrine of separation of powers requires the thing most important of protecting the judiciary against interference from any President. This protection needs to be assured. Control of the judiciary's budget rightly belongs to Congress and not the executive branch."

Further, an article in today's New York Times stated that the line-item authority poses "a threat to the independence of the judiciary because a President could put pressure on the court or retaliate against judges by vetoing judicial appointments bills." The article stated that Judge Gilbert Merritt, chairman of the executive committee of the Judicial Conference of the United States, stated that "judges were given life tenure to be a barrier against the winds of temporary public opinion. If we don't have judicial independence, I'm not sure we could maintain free speech and other constitutional liberties that we take for granted."

It is clear what the Supreme Court will find when this law is challenged. But what is clear to me is that this bill is anti-constitutional. It is counter to the philosophy of the Constitution. The Constitution clearly separated each branch of government, giving each specific duties—and did so for a reason.

If one reads the Constitution, it is clear that the Framers deliberately placed the power of the purse in the hands of Congress. Article I, Section 7 of the Constitution states, "The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States."

Power over the purse has consistently rested in the hands of the Representatives and Senators of our country. This power is critical in maintaining our system of checks and balances. The Framers understood that power must shift that power away from Congress and put it in the hands of the President. It allows the President to unilaterally change a law after it is enacted—to cut off spending Congress has deemed necessary.

Moreover, this bill is contrary to its intended purpose: Deficit reduction. Some of my colleagues did not support the balanced budget amendment to the Constitution. I supported it because it covers every dollar of spending and taxing. This bill does not. Furthermore, the balanced budget amendment did not upset the balance of powers between the branches. This bill does.

There is a cliche that to every problem there is a simple wrong solution. Do we have a deficit problem? Yes. Will this bill solve our fiscal crisis? No. This bill is the wrong solution to our deficit problems. It is almost solely aimed at discretionary spending, which is clearly not one of the major causes of the budget crisis the Federal Government is facing.

I served on the Bipartisan Commission on Taxation, Averting and Tax Reform. If we do not act, by the year 2012 entitlement spending will outstrip revenues. So discretionary spending could be cut to zero and still not solve our problems. Domestic discretionary spending has not grown as a percentage of the GDP since 1969, when we had a balanced budget. Domestic discretionary spending comprises only one-sixth of the $1.5 trillion Federal budget, and that percentage is steadily declining.

In practice this bill will have a minimal impact on the deficit. Yet this bill will have a high impact on the level of the public's cynicism because it will not solve our country's budget crisis. Congress is already having difficulty passing its 12th continuing resolution. The American people already have doubts about Congress' ability to pass funding measures. To reaffirm our commitment to the American people's priorities, we should remind ourselves of what we swore to do when we entered office: to uphold the Constitution. This line-item scheme violates the philosophy of that document.

Spending authority rests primarily with Congress because our Nation's Founders thought that that was the best small "d" Democratic thing to do. 535 Members of Congress by definition are closer to the people than the President. Members of Congress are elected from all over the country reflecting the people's thoughts to both the cities and states. Can one executive reflect the needs of our Nation's varied constituencies better than a Member of the House who has to run every 2 years? The President, as stipulated in the Constitution, can only face the people once, and if any of those times is before he takes office.

Part of our Nation's success is due to our healthy mistrust of the centralization of authority. The Founding Fathers created a system like France. They built a country based on a union. As Jefferson once said, "the way to have good government is not to trust it all to one, but to divide it among the many, distributing to every one exactly the functions he is competent to perform." The Founders thought that Congress was competent to legislate our spending bills, not the executive. More than 200 years of success is hard to argue with. All know, after several months of work to get a bill signed into law. Under current law, the House and Senate can pass a bill and then send it to conference where the differences between the House and Senate versions of the bill are resolved. Often times conferenees spend hours, even days and weeks, working to resolve differences, so that both Houses can support the end product. This can be a delicate proceeding, calling for compromise and flexibility.

Upon completion of conference the House and Senate vote on the conference report and send the bill to the President for signature. Under this legislation, if the President decides to sign the bill, he can either decide to strike out, for instance, specific spending provisions in an appropriations bill. Under this bill, the President would also have the power to line-item out items that are listed in graphs, tables, charts, conference reports, or in any statement of managers, or portions of a committee report not superseded by the conference report. The scope of possible rescissions is enormous.

If Congress disagrees, the President's rescissions, they could pass a disapproval bill which would have to be passed by both Houses, get through conference, and be passed again. Should the President proceed to veto the disapproval bill, it would take two-thirds of the Members in each Chamber to override the President's veto. Since we have not even been able to pass a budget this year, I tremble to think what adding additional steps to the process will do to Congress' ability to act.

Clearly this is the most significant delegation of authority to the President that we have seen in over 200 years. If Congress passes this conference report we will abdicate our authority guaranteed to us under the Constitution, and give it to the President. Moreover, although this bill seeks to solve our fiscal problems, it could also serve to indirectly increase spending. For instance, if the Administration wants to do something that is a mandatory program, he could lobby the Member to support his initiative by threatening to line-item out all of the appropriations for projects in that Member's district. As my friend Ab Mikva wrote in the March 25th edition of Legal Times, "For those of us who think that the executive branch is strong enough, and that an imperial presidency is more of a threat than an overpowering Congress, the current balance of power is just right."
Mr. LAUTENBERG. Mr. President, I rise to express opposition to this conference report. There is a right way and a wrong way to provide the President with a line-item veto. This is the wrong way.

Mr. President, I have supported a line-item veto in the past. I believe that the President should have greater authority to weed out wasteful tax breaks and unnecessary weapon systems.

But this legislation goes too far. I have three major objections to this conference report.

First, this legislation cedes too much power to the President. Under this proposal, any President and one-third plus one in the House can stop any appropriation legislation much further than the so-called separate rate enrollment bill that passed the Senate. The legislation before us, in effect, allows the President to veto report language and tables in Committee reports. This means that the President can veto anything in any bill that is not subject to conference. And the only way to override this type of veto is to get two-thirds of the Members in both House to support an individual item—which is highly unlikely.

The President of the United States already has awesome constitutional power. Look at what has happened in the past 6 months.

The President vetoed a Republican budget that made huge cuts in Medicare and Medicaid to pay for tax breaks for the rich. He stopped this cold.

He also vetoed a welfare reform bill that would have doomed 1.5 million children to live in poverty.

Finally, he vetoed spending bills that made deep cuts in education, environment, and community policing.

Mr. President, the Congress was never able to override these vetoes. This demonstrates how powerful the President can be when it comes to vetoing unfair budget priorities. We should not provide the chief executive with this new power on top of the tremendous power he already possesses.

Second, this legislation makes a mockery of applying the line-item veto to tax breaks. The Senate bill originally allowed the President to use the line-item veto to stop some tax breaks. These breaks were defined far too narrowly. But even this language did not survive conference.

This conference report only allows the President to veto tax items that affect fewer than 100 persons. This means that Congress can pass a tax break that only applies to people with incomes over $1 million and the President could not single this out. Furthermore, the language also exempts other classes of persons from the tax provisions of the bill. One such exemption is property.

Therefore, if Congress passed a tax break for 99 owners of a certain type of yacht, the President could not veto this provision.

In summary, this legislation allows the President to use the line-item veto to reject provisions of legislation on education and environment but not to reject tax breaks for millionaires. This is preposterous.

Finally, I object to the Republican political hypocrisy that went into choosing an effective date and sunset date for this legislation.

This bill was a part of the so-called Contract With America. The House passed its version of this bill on February 6, 1995. The Senate passed its version on March 23, 1995.

During debate on this legislation, I heard many Republicans in both Houses say that they were so committed to passing this legislation that they were willing to give this power to a Democratic President. They argued how important the line-item veto was to cut out wasteful spending and unnecessary tax breaks.

Despite all of the clamoring by the Republicans, they began to drag their feet so that they would not have to give this power to President Clinton. They delayed naming conferences on the bill. They stalled on calling a meeting for the conferences. They kept dragging it out so that they could pass the fiscal year 1996 appropriations bills before the line-item veto bill became law.

During this period of inaction, the Republican majority sent President Clinton a pork-laden Defense appropriations bill that spent $7 billion more than the Pentagon wanted. This is just a small example of what happened in the line-item veto bill.

Mr. President, this is so blatantly political. But this is not the reason why we should reject this conference report. We should vote this down because it cedes too much power to the President and renders him powerless to fight tax breaks to the wealthiest Americans.

I urge my colleagues to reject this conference report.

I yield the floor.

Mr. CRAIG. Mr. President, I rise in support of S. 4, the conference report on the Line-Item Veto Act. The Senate is now wrapping up a long-overdue and historic debate.

I note that two words in particular sound very good in this debate: conference report. There must be many Members in both the Senate and the other body who have wondered if they would ever see these two words used in connection with the line-item veto.

I want to recognize and commend the leadership and longstanding commitment that Senators McCain and Coats have shown on this issue, as well as Chairman Domenici and Chairman Stevens, for their work in shepherding this legislation through committee, earlier passage in the Senate, and now, the conference process.

I want to thank you for your appreciation for the leadership of our distinguished majority leader, Senator Dole, in bringing this vital reform to the floor. His name was at the top of this bill when several of us first introduced S. 4 on the first day of this 104th Congress.

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amendment as well, and help pass it through the Senate so we can attack the cancerous Federal debt on a larger scale.

Second, the line-item veto will improve legislative accountability and produce a more thoughtful legislative process.

Starting when this act takes effect, Congress will be forced to reconsider questionable spending items and targeted tax breaks—items that Congress would never pass in the first place if those items were considered on their own merits—items that just do not stand up under any amount of public scrutiny.

It would cast an additional dose of sunlight on the legislative process. We are all familiar with the rush to get the legislative trains out on time. That means bills and reports spanning hundreds of pages that virtually no one is able to read—much less digest—in the day or two that they are before the body.

Moreover, any more it seems that virtually every appropriations bill—even the 13 regular bills—and virtually every tax bill, is a huge bill.

Knowing that any individual provision or earmark will return to Congress one more time to stand on its own merit will promote more responsible legislation in the first place.

In short, embarrassing items will not be sneaked into these bills in the first place.

Third, a line-item veto would improved executive accountability.

There is always some concern that the line-item veto would transfer too much power from the Congress to the President.

First, I suggest that is not such a bad thing. The Framers of the Constitution never envisioned 1,500-page, omnibus bills presented to the President on a take-it-or-leave-it basis.

This is the constitutional system of checks and balances—it is a correction. The system is broken. This is one of the first steps in fixing it.

The supposed blackmail that Presidents will exert over Congress as a result of the line-item veto, is nothing, compared what kind Congress has exerted for years on the President.

A President will rarely, if ever, risk closing down an entire department in a mere attempt to take out a handful of earmarked, local benefits.

But let me also differ a little with the presumption that a radical shift of power would take place.

Many of us on both sides of the aisle have suggested, at different times, that Presidents are not always serious about the rescissions messages they send to Congress.

And, sometimes, the volume of rescissions they propose do not live up to tough talk about what they would do if they had the line-item veto.

It is time to call the President’s bluff—and I mean every President, because this is a bipartisan issue.

For years now, we have seen groups like Citizens Against Government Waste and others come up with billions of dollars in long lists of pork items. Once the President starts using the line-item veto authority, he or she will have to defend why the public if the use of that authority doesn’t match the Presidential rhetoric.

Congress would lose the power of the purse—but the President will soon be expected to use the power of the spotlight of heightened public scrutiny.

Mr. B YRD, the PRESIDING OFFICER (Ms. SNOWE). The majority leader.

Mr. DOLE. Madam President, I ask unanimous consent that a vote on the adoption of the conference report accompanying S. 4, the line-item veto bill, occur at 7 p.m. this evening, with the time between now and the vote to be equally divided between Senators McCain and Byrd.

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

Mr. JOHNSTON addressed the Chair. The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. Madam President, I rise in support of the position of the Senator from Virginia, Mr. Byrd, on the line-item veto.

The PRESIDING OFFICER. Who yields the Senator time?

Mr. BYRD. How much time do I have under my control, the Chair?

The PRESIDING OFFICER. The Senator has 25 minutes.

Mr. BYRD. Twenty-five minutes. I yield 5 minutes to the distinguished Senator from Louisiana.

Mr. JOHNSTON. I thank the Senator.

Madam President, this matter is not about balancing the budget, it is not even about the size of the deficit. This matter is about the relative power of the Chief Executive of the United States and the Congress of the United States.

I would want to give up the constitutional powers, which, by the way, I do not believe under the Constitution they have the right to do even if they wish to do that foolish thing, but why we would want to do that, I do not know.

I am particularly surprised, Madam President, that some of my colleagues on the other side of the aisle who fought so hard, for example, for star wars, why they would want to give to the President the right to veto star wars. I happen to have been an opponent through the years of star wars, at least at the levels of expenditure—$33 billion has been spent on star wars so far. I think that is a tremendous waste. But, Madam President, I defend the right of this body and of this Congress to set those priorities. Why you would want to give it to the President to be able to change a bill already signed into law, to turn a bill without taking out the whole bill, I do not know, Madam President.

Yesterday, there was an article in one of the Louisiana papers in which it said, “Louisiana delegation gets piece of pork.” They went on to describe an appropriation that Congressman Liv- ingston and I had gotten in the New Orleans area because we had a flood down there of biblical proportions, over 20 inches of rain in a four period, seven people killed, $1 billion in damage. We were able to respond to that issue.

They went on to define “pork” as that which was not in the President’s budget. If the Congress exercised its power under the Constitution, the power of the purse, then that was pork, according to this article and according to the National Taxpayers Union. But it had been in the President’s budget, it would have been perfectly all right.

The idiom of that kind of formulation, Madam President, is to me, absolutely incredible. Coming from a newspaper article, it is not unexpected because that is the kind of thing that people like to read. But coming on to the floor of the Senate saying it is the White House that knows best, it is—and we are not talking about the President; we are talking about the nameless, faceless gnomes in the White House who would be setting the priorities, making policies, making the decisions about our constituents.

Our constituents would be coming to us, as in the case of this 20-inch flood. You bet I was down there after the flood, as were my colleagues, going through the homes, looking at the devastation, trying to sympathize with the people, they demanding in turn that we do something about this terrible tragedy. Our colleagues are saying,” Look, if it’s not in the President’s budget, it should not be part of the bill. It is up to the White House to set those priorities.”

Madam President, there was nobody from the White House down in Louisi- ana to see that flood. They could not have possibly gone through the homes and seen all the devastation, trying to sympathize with the people, demanding in turn that we do something about this terrible tragedy. Our colleagues are saying,” Look, if it’s not in the President’s budget, it should not be part of the bill. It is up to the White House to set those priorities.”

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Madam President, we are closest to the people, and we respond to them. To leave all of that power in, as I say, not the President—maybe the President would decide on the flood or someone else like that, but the accumulation of items in that budget would be decided by OMB. And what would be the policy of OMB? They would have to have broad policies, such as to say, if it is not in the President’s budget, we are going to veto it. We are going to treat everybody alike.

The PRESIDING OFFICER. The Senator’s 5 minutes have expired.

Mr. JOHNSTON. One additional minute.

Mr. BYRD. I yield 1 additional minute.

Mr. JOHNSTON. Madam President, the shift in power which this would
bring out would be absolutely mind-boggling to me. You know, the whole fight would be, “Can you get in the President’s budget or not?” It would make total supplicants of all Members of Congress. You might like that if you like centralization, but I think this President is going to be reelected. I like him. I must say I do not like him enough to turn over to him, and to all of his successors, the power of the purse when it is vested by the Constitution in this Congress.

Many of my colleagues, Senator BYRD, and others, made a powerful statement about the unconstitutionality of this provision earlier today. They surely are right. If we do not stand up for the rights of the Congress under the Constitution, I hope the courts will. I will support the Senator from West Virginia.

Mr. BYRD. Madam President, I thank the distinguished Senator. I yield the remainder of my time to Senator SARBANES.

Mr. SARBANES. Ten minutes?

Mr. BYRD. Ten minutes.

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

Mr. BUMPERS. Would the Senator from West Virginia give me 1 minute prior to the Senator from Maryland speaking and it not come off the Senator’s time?

Mr. BYRD. I yield 10 minutes to Senator SARBANES, but first I must yield to Senator BUMPERS.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

Mr. BUMPERS. I thank the Senator from Louisiana for a very powerful, cogent statement. Number 2, I want to say to my colleagues that, if by some chance the Supreme Court does not rule this unconstitutional, you will never be able to take this power back. Thirty-four Senators can keep you from ever taking this power back. It will be gone forever.

When the Framers assembled in Pennsylvania, in Philadelphia, in 1787, the one thing they knew above everything else was they had had all the kings they wanted. They wanted no more kings. And they succeeded admirably. We have had 43 Presidents and no kings—until now. We are doing our very best to transfer kingly powers to the President of the United States. I thank the Senator for yielding.

Mr. SARBANES addressed the Chair. The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Madam President, I want to express my very deep appreciation to the distinguished Senator from West Virginia, Senator BYRD, for the extraordinary statement which he made earlier today on this issue. It is my prediction that, if this measure passes and is implemented, history will look on this moment and say that was a critical turning point in our constitutional system and that it was the Senator from West Virginia, above all others, who stood on the floor and warned of what this would bring about; that it was the Senator from West Virginia who understood our existing constitutional system the best and saw the dangers inherent in this proposal.

Part of what is happening here is that the President has been quite strong, we call it check and balance upon the executive. Another hallmark is to have an independent judicial branch which can operate as a check and balance in the system. It should be noted that we have received a letter from the Judicial Conference of the United States expressing their very deep concern about this measure and indicating that they feel it undermines the independence of the judicial branch of our Government.

The Senate from the West Virginia, to his enormous credit, is a great institutionalist. He believes in the institutions of our Nation and is concerned with maintaining their strength and viability and resists the politicalcad of the moment. Our forefathers established a balanced Government with independent branches, not only an executive with power and authority, but a legislative branch with power and authority, and a judiciary that is independent. This measure significantly erodes the arrangement which has served the Republic well for over 200 years.

I invite all of my colleagues to stop and think for a moment about how this bill is really about balancing the budget, which the President and the Congress have been making in recent years.

What is happening here is an enormous transfer of authority from the executive branch to the Senate, which completely contravenes and contradicts the Constitution, so much so that I believe when tested in the courts, this measure will be found wanting that will I prove to be the case. This proposal gives the President the power, or purports to give the President the power, once he signs a piece of legislation into law, to then take out of that law various items—actually, as many as he chooses to pick—by what is called rescinding appropriation items—that unmaking of existing law. The Congress then, in order to override that rescission, would have to pass a disapproval bill which the President can veto. Once he vetoes the disapproval bill it takes a two-thirds majority in both Houses to override the President’s rescission.

Thus, under the proposal before us, the President, as long as he can hold on to the third plus one of either the Senate or the House—not both bodies; either the Senate or the House—can determine every spending priority of this country. Think of that. The President and 34 Senators, or the President and 166 Members of the House—not “and” but “or”—can determine every spending priority of this Nation. Obviously this represents a fundamental reordering of the separation of powers and the check and balance arrangements between the branches of executive branch in our Nation’s Constitution.

Unfortunately, there is a tendency to dismiss such broad-reaching constitutional questions. They were, however, very much at the forefront of the thinking of the Founding Fathers when they devised the Constitution in Philadelphia in the summer of 1787; a Constitution that I might observe has served the Republic well for more than 2 centuries. As the able Senator from West Virginia has observed a very well, he put into place and it has served this Nation well.

Obviously, when we consider changing our Nation’s basic charter we need to be very careful and very prudent.

Now, I submit it does not take great skill or vision to have a strong executive. Lots of nations have strong executives. In fact, if a country’s executive is strong enough, we call it dictatorship. If we review history, even look around the world now, we can see clear examples of this. It is one of the hallmarks of a free society to have a legislative branch with decisionmaking authority, which opens up the check and balance upon the executive. Another hallmark is to have an independent judicial branch which can operate as a check and balance in the system. It should be noted that we have received a letter from the Judicial Conference of the United States expressing their very deep concern about this measure and indicating that they feel it undermines the independence of the judicial branch of our Government.

That letter states in part: The Judiciary believes there may be constitutional implications if the President is given independent authority to make line-item vetoes of its appropriations acts. The dependence of separation of powers organizes the vital importance of protecting the Judicial branch against interference from any President.

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I invite all of my colleagues to stop and think for a moment about how this bill is really about balancing the budget, which opens up the check and balance for the executive branch, for the President, to bring enormous pressure to bear upon the Members of the Congress and therefore markedly affect the dynamics between the two branches. The President could link—easily link, obviously will link, in my judgment—unrelated matters to a specific item in the appropriations bill. Suppose a Member is opposing the President’s policy—perhaps somewhere in the world or on some domestic policy; perhaps a nomination which the President had made—and the President receives a bill which contains in it an item of extreme importance to the Member’s district or State, justified or not, which opens up the check and balance for the executive, and the President calls the number and says he noticed this item, he certainly hopes he does not have to read it. He does want to do so. He knows it is meritorious. But at the same time, he has this other issue that he is very concerned about in which the Member is opposing him.
My friend from Louisiana spoke of how the line-item veto power would be used to directly neutralize congressional policy on a particular issue. A majority is in favor of a certain policy, the President pulls it out and negates it, he strikes that one-third of one provision and that is the end of it—even though a clear majority in both Houses of the Congress wanted the policy.

The next step beyond rendering the congressional opinion null and void on a specific issue itself, is to link that issue to some other unrelated issue on which the President is seeking to obtain leverage over the Member of Congress. In fact, in the hands of a vindictive President, the line-item veto could be absolutely brutal. I want to lay that on the record today. In the hands of a vindictive President the line-item veto could be absolutely brutal. But you would not need a vindictive President for abuses. Presidents anxious to gain their leverage, as is every President, shall use this weapon to pressure legislators.

Mr. JOHNSTON. Will the Senator yield?

Mr. SARBANES. I am happy to yield to the Senator.

THE PRESIDING OFFICER. The time of the Senator is expired.

Mr. BYRD. Mr. President, how much time do I have?

THE PRESIDING OFFICER. The Senator has 7 minutes.

Mr. BYRD. I yield 2 additional minutes to Senator SARBANES.

Mr. SARBANES. I yield to the Senator from Louisiana.

Mr. JOHNSTON. Madam President, I wonder if the Senator finds this parallel: In a conference report, when the Senate and the House go to a conference committee, there are bargains struck, and finally a bill put together. Would it not be somewhat like being able to strike a bargain, putting the bill together, signing off on it, and then after the bill is signed, have one House strike all the items that the other House wanted?

Mr. JOHNSTON. You could absolutely redo the legislation. I ask unanimous consent to have printed at the end of my remarks an article written by Judge Abner Mikva on this very point, called "Loosening the Glue of Democracy." I ask unanimous consent to have printed at the end of my remarks an article written by Judge Abner Mikva on this very point, called "Loosening the Glue of Democracy." I ask unanimous consent to have printed at the end of my remarks an article written by Judge Abner Mikva on this very point, called "Loosening the Glue of Democracy." I ask unanimous consent to have printed at the end of my remarks an article written by Judge Abner Mikva on this very point, called "Loosening the Glue of Democracy." I ask unanimous consent to have printed at the end of my remarks an article written by Judge Abner Mikva on this very point, called "Loosening the Glue of Democracy." I ask unanimous consent to have printed at the end of my remarks an article written by Judge Abner Mikva on this very point, called "Loosening the Glue of Democracy." I ask unanimous consent to have printed at the end of my remarks an article written by Judge Abner Mikva on this very point, called "Loosening the Glue of Democracy." I ask unanimous consent to have printed at the end of my remarks an article written by Judge Abner Mikva on this very point, called "Loosening the Glue of Democracy." I ask unanimous consent to have printed at the end of my remarks an article written by Judge Abner Mikva on this very point, called "Loosening the Glue of Democracy." I ask unanimous consent to have printed at the end of my remarks an article written by Judge Abner Mikva on this very point, called "Loosening the Glue of Democracy." I ask unanimous consent to have printed at the end of my remarks an article written by Judge Abner Mikva on this very point, called "Loosening the Glue of Democracy." I ask unanimous consent to have printed at the end of my remarks an article written by Judge Abner Mikva on this very point, called "Loosening the Glue of Democracy."

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

(See exhibit 1.)

Mr. SARBANES. Madam President, the Senator from West Virginia made a constructive proposal, which was just tabled, which would have allowed the President to propose rescissions to the Congress for consideration on an expedited basis, with the Congress having to vote on the omnibus or with a majority vote required to approve the rescission. This would have enabled the President to spotlight those items of which he disapproved and required a congressional vote on them but would not have altered our basic constitutional arrangements.

The line-item veto tool contained in this legislation will not, in my judgment, become a way to delete appropriation items, but rather a tool and a legislative strategy used by the White House and executive branch to pressure Members on their positions on unrelated items. It will become a heavy, coercive weapon of pressure.

This is a dangerous departure from past constitutional practice, drastically shifting the balance between the executive and legislative branches. It will fundamentally alter our constitutional arrangement to the detriment of a government which has served well our Republic and been the marvel of the world.

Madam President, I close by again expressing my deep gratitude to the Senator from West Virginia for so clearly and eloquently setting forth the severe problems connected with this proposal.

EXHIBIT 1

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

LOOSENING THE GLUE OF DEMOCRACY

THE LINE-ITEM VETO WOULD DISCOURAGE CONGRESSIONAL COMPROMISE

(By Abner J. Mikva)

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

My bias against the unbundling of appropriations and other legislative proposals has changed over the years. When I first saw the appropriations process, back in the Illinois legislature, it struck me that there was a necessity to bundle dozens of purposes into a single bill. It also seemed unconstitutional since the Illinois Constitution had a "single bill" provision. But proposed bills considered by the legislature were to contain only one subject matter. But the "single purpose" clause had been observed in the breach for many years by the Illinois legislature. If I first saw the bundling process work when a single bill, presented for final passage, appropriated money for both the Fair Employment Practices Commission and a host of other commissions, including one to provide services for Spanish-American War veterans (there were two left in the state at the time) and one to provide services for veterans who had inhabited the Downstate portions of Illinois. If I wanted to vote for the FEPC, I had to swallow all those other commissions, which I had thought would be opposed to the constitutional clause. To my dismay, the legislature favored all the other commissions on separate votes, but the FEPC went down to defeat. That is how I learned that there are some pluses to the bundling process.

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

Consider South America, where regional rivalries and political parochialism make governing very difficult. The inability to form the political coalitions that are necessary in this country creates enormous pressure on the central government. This pressure is certainly one of the causes of the mini-revolts that perpetually arise. The presidents feel excluded from the process, while the majority (or the military regime) exercise their power without taking care of the depressed areas of the country. It is more difficult for those have-nots in the United States. First of all, members of Congress are elected as representatives of geographic areas, rather than as representatives of parties. We know that the congressman who starts thinking too much like a national legislator and forgets the parochial interests of his constituents.

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

It is true that bundling encourages the merger of bad ideas with good ideas, and diminishes the ability of the president to undo the package. A line-item veto, which would allow the president to veto any single piece of an appropriations bill (or, under some proposals, reject disparate pieces of any other bill), makes the whole process more rational. It makes it possible to find a legislative glue that holds the disparate parts of our country together. City people usually don't care about dams and farm policy. Their rural cousins don't think much about mass transportation or urban renewal or housing policy. If the two groups of representatives don't have anything to bargain about, it is unlikely that either solely local concerns will receive appropriate attention.

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

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

But now the political dynamics have changed. The Republicans in Congress can outhustle a Democrat who believes the incumbent president—unless he gets re-elected—and their probable presidential candidate, Senate Majority Leader Robert Dole, has recently made clear that he wants this passed. Chances for the line-item veto are vastly greater.

There are some constitutional problems in creating such a procedure. The wording of the Constitution suggests pretty strongly that a bill is presented to the president for his signature or veto in its entirety. It will take some creative legal brains to come up with such a "technicality." I reluctantly advised the president last year that it was possible to draft a line-item veto law that would pass constitutional muster. The proposal involved a Rube Goldberg plan that "pre-tended" that the omnibus appropriations
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legislation passed by Congress and presented to the president actually consists of separate bills for various purposes. This pretense was efectuated by putting language in legislation that required the President to sign each bill individually.

President Clinton was not then asking for my policy views, and I did not have to rec

Senator from Alaska, Mr. STEVENS.

by 7 o’clock.

from West Virginia wants to leave here

side of the aisle. I know the Senator

Mexico, Senator DOMENICI, and the

assistance of the Senator from New

Indiana, Senator COATS, with the great

particularly the Senator from Arizona,

time has come.

the line-item veto is an idea whose

gress has its priorities. But I believe

Chief of Staff, Mr. Panetta, and trying

somebody in the White House who

are working with the White House.

very, very complicated these days. We

come together on those, taking a little

five appropriation bills, and we have

President. But we have been negotiat-

all afternoon in my office. We have

five appropriation bills, and we have

been trying to figure out how we can

come together on those, taking a little

out here and adding a little here. It

is very, very complicated these days. We

are working with the White House.

I try to mitigate the fears and concerns

expressed would be if you had some-

body in the White House who

stifled Congress on everything and re-

fused to negotiate. Right now, in my

office we are negotiating with the

Chief of Staff, Mr. Panetta, and trying

to come together on a big, big ap-

ropriation bill so that we can pass it on

Friday. We may not get it done because

they have their priorities, and Con-

gress has its priorities. But I believe

the line-item veto is an idea whose

time has come.

I certainly thank all those involved,

particularly the Senator from Arizona,

Senator MCCAIN, and the Senator from

Indiana, Senator STEVENS, with the great

assistance of the Senator from New

Mexico, Senator DOMENICI, and the

Senator from Alaska, Mr. STEVENS.

This is not a partisan measure. Presi-

dent Clinton supports the line-item

veto, I think it has support on each

side of the aisle. I know the Senator

from West Virginia wants to leave here

by 7 o’clock.

Madam President, again I am proud

that today the Senate is passing the

conference report on the Line-Item

Veto Act of 1996. Giving line-item veto

authority to the President is a promise

we made to the American people in the

Contract With America, and it is a

promise we are following through on
today.

Line-item veto seems to be the one

thing that all modern Presidents agree

on. All of our recent Presidents have

called for the line-item veto—both

Democrats and Republicans alike. And

good reason. The Presi-

dent, regardless of party, should be

able to eliminate unnecessary pork-

barrel projects from large appropria-

tions bills.

Most of our Nation’s Governors have

the line-item veto. Some States have

had line-item veto since the Civil War.

There’s a lot of experience out there in

the States that shows us this is a good

idea; 43 Governors have the line-item

veto, and now—finally—the President

will, too.

President Clinton and I have talked

about the Line-Item Veto Act. He

wants the line-item veto and we both

think it is a good idea.

Certainly, the line-item veto is not a

cure-all for budget deficits. No one is

pretending it is the one big answer to

to all of our budget problems.

But it is one additional tool a Presi-

dent can use to help keep unnecessary

spending down so we can fulfill our

pledge to American taxpayers for less

Washington spending.

Line-item veto has a lot of support in

the Senate. We passed our version of

the bill in the Senate just about a year

ago on March 17, 1995 with the sup-

port of 69 Senators.

But I know some are worried that it

shifts the balance of power away from

Congress and to the President. Well,

appropriations bills that go on for hun-

dreds of pages have already altered the

dynamic between the President and

Congress from what it was 200 years

ago.

Even so, for those who aren’t so sure

line-item veto is the right approach,

this bill has a sunset in it. We will try

this experiment for a few years and see

if it works. I am confident it will. It

is an idea whose time has come.

Mr. President, I want to thank Sen-

ators STEVENS, DOMENICI, MCCAIN, and

the President for his support of this

bill. It is thanks to them that we are about
to pass this important and historic legis-

lation.

Madam President, I yield 3 minutes

of my leader time to the Senator from

Nebraska.

Mr. EXON. Madam President, my col-

leagues know that I am an ardent sup-

porter of a line-item veto. I had one

when I was Governor of Nebraska and

put it to excellent use. It was crucial to

my success in balancing the budget.

I am an original cosponsor of line-

item veto legislation. I am proud of the

leadership role I have taken. I fer-

ently believe that the President of the

United States should have at his dis-

posal every possible means to strip

away the pork from the Federal bud-

get. The line-item veto should figure

prominently in his arsenal.

Mr. President, I will vote for this

conference report, but I will not con-

ceal my keen disappointment at what

has emerged after nearly a year of

stalling, partisan games, and bicker-

ing. This is a classic case of what

might have been. I was a conferenc

ee and, as such, the mist it was shut out of

the decisionmaking process. I also have

some possible constitutional questions

and concerns.

Anyone who doubts the partisanship

behind this legislation need look no

further than its effective date—Jan-

uary 1, 1997. I have supported the line-

item veto under Republican Presidents

and Democratic Presidents. Those of us

who have long sought the line-item

veto believe it is as flawed as it may be.

Even the staunchest advocate of a

line-item veto must confess that the 

Senate bill did not age well in con-

ference. We do not have a better bill

today. The line-item veto before the

Senate today is a half-measure. It only

dresses one side of wasteful Govern-

ment spending.

Madam President, there are different
types of pork around here. There is

what I call classic pork, but it does not

belong in a museum. It is the sweet-

heart awards, the bogus studies, the

phony commissions, the make-work

projects that look good to the constitu-

ents back home.

Frittering away the taxpayers’ dol-

ars is an affront to middle-income

Americans who have been stretched

and squeezed enough. This is where

the line-item veto can be a fierce instru-

ment—all the more so against waste that
can slice out the pork with a slash of his

pen. In this regard, the measure before

the Senate today is a half-measure. It only

dresses one side of wasteful Govern-

ment spending.

At the request of those Senators who have long sought the line-item veto under Republican Presidents and Democratic Presidents, those of us who have long sought the line-item veto believe it is as flawed as it may be.
expenditures. That is right, Mr. President. It is still pork, but it will be riveted onto a revenue bill or a budget reconciliation bill—like the one the Republican majority passed last fall. Call it a tax loophole or whatever you want, it is still just as wasteful, and it is still just as shameful as appropriated pork spending.

This problem of tax expenditures is not new. We have visited it many times, but with little resolution. The Budget Committee held hearings going back to 1993 on the budgetary effects of tax expenditures. OMB Director Dr. Alice Rivlin testified, and I quote, “Tax expenditures add to the Federal deficit in the same way that direct spending programs do.”

I believe, and many of my colleagues on both sides agree, that if we are serious about cutting wasteful spending, if we are serious about reducing the deficit, if we are serious about a credible line-item veto, we should include special interest tax loopholes in the list of what the President can line out.

What should shine forth from this conference report is an attack on both wasteful spending and taxpayers' money. The Federal deficit is too large. Spending programs do.”

Madam President, the conference report language, it could be virtually impossible for the President to veto special interest tax breaks, or as they are now called, limited tax benefits. There are so many exceptions that any tax lobbyist worth his salt will be able to write legislation in such a way that they will not be subject to the line-item veto procedure. And mark my words, they will.

The conference report language defines a tax benefit as something special interest tax loopholes in the list of what the President can line out.

The exceptions are troubling enough, but they get worse. Who defines a targeted tax benefit for the purposes of the line-item veto? I was surprised to learn that it will be the Joint Committee on Taxation. I, certainly, do not intend to disparage the committee and its fine members, but this oversight duty strikes this Senator like the proverbial fox guarding the henhouse. This conference report would make Aesop proud.

This is how it works. Under the provisions of the conference report, Joint Committee on Taxation will review every tax bill and decide whether the bill includes any tax loopholes, called limited tax benefits. The Joint Committee then gives its ruling to the conference committee, which gets to choose whether to include that information in its conference report. Recall that it is very often the staff of this same Joint Committee on Taxation that drafts the tax loopholes in the first place.

Here is the kicker. If the Joint Committee on Taxation drafts the tax loopholes in the first place. It is the magic bullet for tax lobbyists.

I do not believe that any of my colleagues fell off the turnip truck yesterday. We know how lobbyists work. I guarantee you that they will be swarming over Joint Committee like the sand hill cranes returning to the Platte River in Nebraska. JCT will be thick as thieves with tax lobbyists. And for good reason, the committee will have the sweeping power to grant unprecedented immunity to any Tom, Dick, or Harry with a sweetheart tax deal.

Madam President, I am disappointed by the final product the conferees bring to the floor today. We know how lobbyists work. I guarantee you that they will be swarming over Joint Committee like the sand hill cranes returning to the Platte River in Nebraska. JCT will be thick as thieves with tax lobbyists. And for good reason, the committee will have the sweeping power to grant unprecedented immunity to any Tom, Dick, or Harry with a sweetheart tax deal.

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Madam President, I congratulate the conferees for their work on this bill. This conference report provides the President with a veto and a narrow authority to cancel specific appropriations, direct spending, or limited tax benefits. Under this provision, the Congress retains its legislative power of the purse in that the Congress may enact a bill disapproving the President's previous cancellation. This bill, of course, would be subject to a Presidential veto and subsequent congressional override.

Madam President, I congratulate the conferees for their work on this bill. This conference report provides the President with a veto and a narrow authority to cancel specific appropriations, direct spending, or limited tax benefits. Under this provision, the Congress retains its legislative power of the purse in that the Congress may enact a bill disapproving the President's previous cancellation. This bill, of course, would be subject to a Presidential veto and subsequent congressional override.
Amendment and repeal of statutes no less than enactment must conform with article I. This conference report comes up with a new procedure which does not conform with article I and says that the President may cancel—that means re- peal, void—the law of the land of the United States of America. He can with his pen on day 1 create a law by signing our bill, and on day 2, 3, 4, 5, or 6 cancel what is then already the law of the land.

Madam President, the Constitution will not tolerate that. We should not even attempt to do such a thing. There have been many reasons given for why the line-item veto in one version or another would be useful in terms of deficit reduction. There are ways constitutionally of doing it. The Senator from West Virginia made that effort earlier this afternoon. The current conference report before us simply cannot stand muster.

Again, I thank my friend.

Mr. McCAIN. Madam President, how much time remains?

The PRESIDING OFFICER. There are 22 minutes remaining.

Mr. McCAIN. I yield 11 minutes to the Senator from West Virginia.

The PRESIDING OFFICER. The Senator from Indiana is recognized.

Mr. COATS. Madam President, I thank my colleague for yielding. I appreciate the debate that we have had. It has been long and difficult and sometimes tortuous road to this particular point. It was in the early or late 1800's that the first attempt to provide the line-item veto power to the executive branch was offered in the Congress. There have been 200 attempts subsequent to that. So it has been a long effort.

The question was raised: Why would Congress cede its independence? Why would it surrender its power over spending to the executive branch?—because it is an extraordinary effort; it is a historic effort. But I would say that the reason this is happening and the reason this will pass very shortly with a pretty substantial bipartisan vote is that there has been an extraordinary abuse of the power of spending. Despite every legislative effort and every promise and pledge on this floor, the egregious practice of blackmailing the President by attaching to otherwise necessary spending bills pork barrel projects, projects spending that does not have any relevance to the particular bill and would never probably stand the light of day in debate on that particular issue or receive a majority vote has been patented into law.

I would just say in response to the Senator from Michigan that we have had constitutional lawyers pour over this legislation for years and years. The Chadha decision does not apply to this. The constitutional lawyers from each end of the spectrum have said that the legislation that we are presenting is constitutional.

I would like to take this opportunity to thank some people for their extraordinary work on this. I acknowledge Senator Byrd's articulate and worthy opposition to this message throughout the years that we have been debating it. I want to thank Senator Domenici and Senator Stevens for helping us at a critical time. They were key to a strong, workable compromise on the issue. Senator Dole's leadership, his decision to make this happen, to break the impasse and achieve a compromise, was critical to our success. Particularly, it is a privilege to me to thank my friend and colleague, John McCain from Arizona, for his efforts in this regard. I deeply respect his determination. He has been tireless in his fight against the current system and the status quo. He has persevered in long odds, in the face of what often looked like a losing battle. We joined together 8 years ago in a commitment to pass a line-item veto, and it has been my privilege to partner with him in this effort.

Madam President, this measure, in my opinion, is the most important Government reform that this Congress for many Congresses has addressed. Yes, a line-item veto will help reduce the deficit. Yes, a line-item veto will eliminate foolish waste. But our ultimate objective is different. Our current budget process is designed for deception. It requires the disingenuous of senators and representatives.

When we send spending to the President that cannot be justified on its merits, it is attached more often than not to important appropriations bills. This has tended, first, to tie the President's hands, leaving him with a take-it-or-leave-it decision on the entire bill. Second, it is used as a means of obscuring spending in the shuffle of uncounted billions of dollars of appropriations. When we hide our excess behind a shield of vital legislation, our aim is plain. We do it to mask our wasteful spending by confusing the American taxpayer. We have created a system that avoids public ridicule only because it consciously attempts to keep our citizens from knowing how their money is spent. This is not a rational process. This is a deception. It is a trick, and it must stop. It is more than abuse of public money; it is a betrayal of public trust.

But now we have an opportunity to end that abuse and restore that trust. We have a chance to pass legislative line-item veto in a form that has gained support from both parties and in both Houses of Congress. We have the power to make our goal of budget reform a reality. It is not all that we need to do, but it is a huge leap forward.

The line-item veto is designed to confront our deficit and to save taxpayers' money. We have shaped this legislation to accomplish that purpose through a lockbox, ensuring that all
the savings canceled by the President go forward toward deficit reduction.

The line-item veto is not a budgetary trick. Unlike the appropriations process that currently exists and has existed from the beginning of this legislation, the line-item veto is not Off-budget. New payroll dates are altered. It is a substantive change aimed at discouraging budget waste by encouraging the kind of openness and conflict that enforces restraint.

There is not to hand the Executive dominance in the budget process. The goal is the necessary nudge toward an equilibrium of budget influence strengthening vital checks on excess. But I think it does something more. I think the real benefit of the line-item veto is that it exposes a process that thrives on public deception. It is a lasting, meaningful reform—changing the very ground rules of the way this legislature has operated.

We have reached a historic decision, a historic moment. The first line-item veto, as I said, was introduced 120 years ago, interestingly enough, by a Congressman from West Virginia, Charles Faulkner. It died then in committee, and since then nearly 200 line-item vetoes have been introduced, each one buried in committee, blocked by procedures or killed by filibusters.

Today we have not been blocked. Today we have not been killed. And this issue will no longer be ignored or no longer avoided. The House and the Senate are in agreement. The President is in agreement. The public is in agreement. And now just one final vote remains.

This measure is a milestone of reform. It is the first time that a Congress will voluntarily part with a form of power it has abused. That is the result of a public that no longer accepts our excesses and excuses. But it is also evidence of a new era in Congress, a Congress that, when the rules have sinned, each one admits it and repents it. We have taken the first steps toward a new conduct in public business.

The rules and customs of the Senate are revered as an action but, rather, for their restraining effect on ill-considered actions. Few things of real importance would ever occur here without Senator Dole's leadership. The advocates of this legislation have cause to celebrate his leadership today, but I think even the opponents of this particular measure could refer to the many occasions when all Senators have had cause to celebrate Senator Dole's leadership of the Senate.

Madam President, the support of my colleagues for the line-item veto have made this long, difficult contest worthwhile and an honor to have been involved in, but even greater honor is derived from the quality of the opposition to this legislation. And every Senator is aware that the quality of that opposition is directly proportional to the quality of one Senator in particular, the estimable Senator from West Virginia, Senator Byrd.

I am deeply grateful to my colleagues who have worked so hard to give the President this authority. I wish to first thank my partner in this long, difficult fight, my dear friend, the Senator from Indiana, [Mr. Coats]. His dedication to this legislation has been extraordinary and its success would not have been possible absent the great care and patience he has exercised on its behalf.

I would also thank Mark Buse on my staff and Sharon Soderstrom and Megan Gilly on Senator Coats' staff.

Madam President, I am grateful to the chairman of the Budget Committee, Senator Domenici, and the chairman of the Governmental Affairs Committee, Senator Stevens. There have been moments in our conference when my gratitude may not have been evident, but I would not want this debate to conclude without assuring both the Senators of my respect for them and my appreciation for their sincere efforts to improve this legislation. We may have had a few differences on some questions pertaining to the line-item veto, but I know we are united in our commitment to the success of S. 4.

Finally, let me say to the majority leader, Senator Dole, all the proponents of the line-item veto know that without his skillful leadership, without his admonition to put differences over details aside for the sake of the principle of the line-item veto, we would not now stand at the threshold of establishing something near to this Nation's future. As, former baseball great Reggie Jackson once described himself, "the straw that stirs the drink" around this place.

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Madam President, I stand by that tribute today. If there is a Member of this body who loves his country more, who reveres the Constitution more, or who defends the Constitution more effectively, I have not had the honor of his or her acquaintance. Should we proponents of the line-item veto prevail, I will take little pride in overcoming Senator Byrd's impressive opposition but only renewed respect for the honor of this body as personified by its ablest defender, Senator Robert Byrd.

Senator Byrd has solemnly adjured the Senate to refrain from unwittingly violating the Constitution. As I said, his love for that noble document is profound and his support thereof of a devoted public servant. I, too, love the Constitution, although I cannot equal the Senator's ability to express that love.
Like Senator Byrd, my regard for the Constitution encompasses more than my appreciation for its genius and for the wisdom of its authors. It is for the ideas it protects, for the Nation born of those ideas that I would ransom my life to defend the Constitution of the United States.

It is to help preserve the notion that Government derived from the consent of the governed is as sound as it is just that I have advocated this small shift in authority from one branch of our Government to another. I do not think the change to be as precipitous as its opponents fear. Even with the line-item veto authority, the President could ill-afford to disregard the will of Congress. Should he abuse his authority, Congress could and would compel the redress of that abuse.

I contend that granting the President this authority is necessary given the gravity of our fiscal problems and the inadequacy of Congress’ past efforts to remedy them. I do not believe that the line-item veto will empower the President to cure Government’s insolvency on its own. Indeed, that burden is and it will always remain Congress’ responsibility. The amounts of money that may be spared through the application of the line-item veto are significant but certainly not significant enough to remedy the Federal budget deficit.

But granting the President this authority, I believe, a necessary first step toward improving certain of our own practices, improvements that must be made for serious redress of our fiscal problems. The Senator from West Virginia reavers, as do I, the custom of the Senate, but I am sure he would agree that all human institutions, just as all human beings, must fall short of perfection.

For some years now, the Congress has failed to exercise its power of the purse as carefully as we should have. Blame should not be unfairly apportioned to one side of the aisle or the other. All have shared in our failures. Nor has Congress’ imperfections proved us to be inferior to other branches of Government. This is not what the proponents contend.

What we contend is that the President is less encumbered by the political pressures affecting the spending decisions of Members of Congress whose constituencies are more narrowly defined than his. Thus, the President could take a sterner view of public expenditures which serve the interests of only a few which cannot be reasonably argued as worth the expense given our current financial difficulties. In anticipation of a veto and the attendant public attention to the vetoed line-item appropriation, Members should prove more able to resist the attractions of unnecessary spending and thus begin the overdue reform of our funding practices. It is not an indictment of Congress nor any of its Members to note that this very human institution can stand a little reform now and then.

Madam President, I urge my colleagues to support the line-item veto conference report and show the American people that, for their sake, we are prepared to relinquish a little of our own power.

I am very pleased to be here on this incredibly historic occasion. I yield the remainder of my time.

Mr. BYRD. Will the Senator yield?

Mr. MCCAIN. I am happy to yield.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Madam President, I think of an old fable about two frogs. They both fell into a churn that was half filled with milk. One of the frogs immediately turned over, gave up the fight, and perished. The other frog kept kicking until he churned a big patty of butter. He mounted the butter, jumped out of the churn, and saved his life.

The moral of the story is: Keep on kicking and you will churn the butter.

Madam President, I say this in order to congratulate Senator McCain and Senator Byrd especially, for their long fight and for their success in having gained the prize after striving for these many, many years. They never gave up. They never gave up hope. They always said, “Well, we will be back next year.”

So I salute them in their victory and, as for myself, I simply say, as the Apostle Paul, “I have fought a good fight, I have finished my course, I have kept the faith.”

I thank all Senators.

Mr. COATS. Will the Senator yield, if I could just respond to that?

First of all, that is a high compliment and I am sure I speak for both Senator McCain and myself in thanking you for that.

But, second, I leave here, after this vote, with the vivid picture in my mind that the Senator from West Virginia is still kicking the churn on this issue, and that the final chapter probably is not written yet.

I admire his tenacity also, and I think he has gained the respect of Senator McCain and I and everyone else for his diligence in presenting his case.

Mr. BYRD. I thank the Senator.

Mr. MCCAIN. I yield my time.

The PRESIDING OFFICER. The question is on agreeing to the conference report on the line-item veto.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the conference report, the yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

The result was announced, yeas 69, nays 31, as follows:

[Roll Call Vote No. 56 Leg.]

YEAES—69

Abraham, Faircloth, Lugar
Ashcroft, Feingold, Mack
Baucus, Feist, McCaskill
Benett, Fris, McConnell
Biden, Gotton, Murkowski
Boll, Graham, Nickles
Broan, Gramm, Pledge
Bray, Grash, Robb
Burns, Gregg, Santorum
Campbell, Harkin, Shelby
Chafee, Hatch, Simon
Coats, Helms, Simpson
Cochran, Hutchison, Smith
Coverdell, Inhofe, Sneak
Craig, Kassebaum, Specter
D’Amato, Kempthorne, Stevens
Kennedy, Kennedy, Thomas
Dole, Kohl, Thompson
Domenici, Kyl, Thurmond
Dorgan, Lieberman, Warner
Exon, Lott, Wyden

NAYS—31

Akaka, Bingaman, Boxer
Bryan, Brown, Daines
Byrd, Geffen, Glenn
Cohen, Craig, Cooper
Dodd, Edwards, Dodd
Ford, Glenn, Grassley
Glen, Graham, Grams

The conference report was agreed to.

Mr. DOLE. I move to reconsider the vote.

The PRESIDING OFFICER. Without objection, the motion to lay on the table was agreed to.

Mr. DOLE addressed the Chair.

The PRESIDENT. The majority leader.

CORRECTING THE ENROLLMENT OF H.R. 2854

Mr. DOLE. Pursuant to a previous unanimous consent agreement, I now call up Senate Concurrent Resolution 49, correcting the enrollment of the farm conference report.

The PRESIDING OFFICER. Under the previous order, Senate Concurrent Resolution 49, a concurrent resolution to correct the enrollment of H.R. 2854 previously submitted by the Senator from Indiana is agreed to.

The concurrent resolution (Senate Concurrent Resolution 49) was agreed to as follows:

S. CON. RES. 49

Resolved by the Senate (the House of Representatives concurring), That the Clerk of the House of Representatives, in the enrollment of the bill (H.R. 2854) to modify the operation of certain agricultural programs, shall make the following corrections:

In section 215—

(1) insert “and” at the end;
(2) in paragraph (2), strike ‘‘; and’’ at the end and insert a period; and
(3) strike paragraph (3).

The PRESIDENT. Under the previous order, the motion to reconsider that vote is laid on the table. The motion to lay on the table was agreed to.