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LINE - ITEM VETO : TRIMMING THE PORK

INTRODUCTION

Congress begins consideration of President Reagan's call for a line-item veto April 10th with hearings before the Senate Judiciary Committee. The proposal could come to the Senate floor by late April, when an increase in the debt ceiling is debated. The controversial initiative to strengthen presidential control over appropriations recently has earned surprising, if tentative, respect--largely because Congress seems unable to control the budget process it created ten years ago.¹

The problem is that under current law the President is faced with only two unpleasant options when unacceptably large appropriations bills, such as last November's \$316 billion continuing resolution, land on his desk. He can "rubber stamp" the bills in their entirety, replete with billions of dollars of special interest spending. Or he can shut down government operations by vetoing the bill. No middle ground is available. A line-item veto would permit the President to "blue pencil" individual items from congressional appropriations, so that pork-barrel or special interest spending is not approved merely by "riding the coat-tails" of essential appropriations.

There is nothing new about the line-item veto. Forty-three state governors have the power, and the veto has been requested by virtually every President since the Civil War. Many bills to give the President line-item veto power have been put before Congress--and failed. The line-item veto has not been considered seriously by Congress as a budget control device until today.

¹ See John Palffy, "Giving the Budget Process Teeth," Heritage Foundation Backgrounder No. 305, November 11, 1983.

Opinions are divided, however, on the merit and legality of the proposal. Opponents claim that the line-item veto would be unconstitutional, and that it would grant the President undue power over spending priorities--without significantly reducing the deficit. Proponents respond that it would be constitutional, that safeguards could be added to control White House power, and that the cumulative impact on spending could be considerable. If Presidents during the last ten years had used line-item veto to cut just 1 percent from yearly spending, the FY 1985 deficit could be half its projected level.

Many practical concerns and constitutional objections need to be answered before the line-item veto is enacted. Despite such problems, however, greater control of federal spending is a legitimate responsibility of the President. And more effective executive control of spending is needed to counter the current institutional incentives for Congress to spend taxpayers' money so freely. The line-item veto, therefore, deserves very serious consideration.

WHY ACTION IS NEEDED

Because, under current law, the President must approve or disapprove entire appropriations bills, Congress is able to pass special interest and non-germane "riders" by incorporating them into major last-minute funding bills and resolutions. If the President refuses to sign such "Christmas tree" bills, he often must shut down the government agencies covered by the legislation. The President can, of course, petition Congress to cancel any spending plans, but unless both Houses of Congress approve the rescission by a two-thirds vote within 45 days, the President must spend the funds. Since the Budget Control Act went into force in 1975, 41 percent of all such presidential rescission requests have been ignored by Congress. None of President Reagan's 1983 rescissions were approved.

A line-item veto would strengthen the President's rescission powers. The President would be able to rescind individual appropriations and allow the rest of the bill to pass. This rescission would stand unless Congress explicitly overrode the veto.

Senator Mack Mattingly (R-GA) has proposed two methods to convey the line-item veto power to the President--a constitutional amendment (S.J. Res. 178) and a legislative rule (S. 1921). The amendment would involve the lengthy amending process, requiring approval by 34 states after passage through both Houses of Congress. S. 1921 would grant the President statutory power for the line-item veto. In theory at least, this could become law in time to give the President line-item veto power for the FY 1985 budget. But this could face serious constitutional challenges and, of course, it would be subject to repeal at any time.

A modification of the line-item veto proposal, offered last November by Senators William Armstrong (R-CO) and Russell Long (D-LA), failed in the Senate by only three votes. Armstrong has promised to present it for a vote again this spring, when Congress debates the debt ceiling. A similar proposal (H.R. 5000) has been introduced in the House by Minority Leader Robert Michel (R-Ill.) Under the Long-Armstrong proposal, the President would be required to defer or rescind spending whenever the federal debt exceeds quarterly limits imposed by Congress. This power would be limited, however. He could not eliminate an entire program or project, or reduce any program by more than 20 percent. Nor could he restrict payments to individuals.

Because the President would still have to accept or reject entire appropriation bills under the Long-Armstrong proposal, and because there would be precise limits on the occasions when the President could employ it, the amendment technically is not a line-item veto. Rather, it strengthens existing rescission powers. Senator Pete Domenici (R-NM) has noted,² however, that tying the line-item veto to the debt ceiling may not be very effective; Congress, for instance, could simply raise the ceiling to prevent presidential action.

THE CASE FOR A LINE-ITEM VETO

Deficit Reductions

The fiscal effects of the line-item veto would be limited because 55 percent of federal spending (interest payments and most entitlements) are permanently authorized, not "appropriated," and thus are not subject to presidential review. Moreover, a President cannot veto appropriations committed from previous years--and these appropriations make up approximately 20 percent of each fiscal year's spending. So less than 30 percent of federal spending (or \$260 billion in the proposed FY 1985 budget) would be subject to line-item veto. The House Budget Committee, in a recent analysis, has argued that even 30 percent might prove an over-estimate.³ By assuming that President Reagan would not veto any defense spending, the Committee concluded that less than \$90 billion would actually be subject to a Reagan line-item veto in FY 1985.

The House Budget Committee analysis is subject to at least two criticisms, however. It is not clear, for instance, that defense spending would be exempt from a Reagan line-item veto. The Administration knows well that the defense budget is not immune from pork-barrel spending--Pentagon and White House officials have

² Congressional Record, November 16, 1983, p. S16331.

³ The Line-Item Veto: An Appraisal, Committee on the Budget, U.S. House of Representatives, January 1984.

tried for years to close a number of unneeded military installations, for example, only to be ignored by Congress. And, while President Reagan might focus the line-item veto on the non-defense side of the budget, the converse would likely be assumed the case during a Democratic administration. As previously enacted multi-year obligations expire, over 40 percent of the federal budget would become at some time or other subject to the line-item veto.

American Enterprise Institute budget analyst Norman Ornstein contends that a President would use the line-item veto to cut only 1 percent a year from the budget. State governors typically veto 1 to 3 percent on spending requests per year. While a 1 percent cut in the FY 1985 budget would amount to only \$9.2 billion--a tiny fraction of the projected \$200 billion deficit--the compounding effects of cutting 1 percent from the budget every year soon would become significant.

Table 1 illustrates such cumulative effects. The table indicates what federal spending might have been in past years if the President had used a line-item veto to make very modest cuts in the budget every year, beginning in 1974. As the table indicates, a line-item veto of just 1 percent of total spending would have reduced the projected FY 1985 deficit by \$105 billion. If the President had cut 2 percent of discretionary, or "controllable," government spending (\$265 billion in FY 1985), the projected deficit would be reduced by \$49 billion.

Table 1

THE LONG TERM EFFECTS OF A LINE-ITEM VETO
(in billions of dollars)

	Actual Spending	Assuming 1 percent of all spending cut per year	Assuming 2 percent cut of "con- trollable" spending per year
1974	268	265	266
1975	324	318	320
1976	365	354	361
1977	401	386	394
1978	448	426	438
1979	491	462	477
1980	577	538	561
1981	657	687	636
1982	728	665	702
1983	796	720	764
1984 (estimated)	854	764	816
1985 (projected)	928	<u>823</u>	<u>879</u>
Reduction in FY 1985 deficit:		\$105	\$49

Note: 1984 and 1985 "actuals" are CBO estimates.

Table 2 illustrates the likely consequences of instituting a line-item veto for FY 1985. If the President cut 1 percent from the budget each year, the total savings over the next five years could amount to \$174 billion, and the FY 1989 spending would then be reduced by \$65 billion. If the President were to cut two percent from only "controllable" items, the total five year savings would still be \$99 billion, and the FY 1989 spending reduction would be \$37 billion (assuming controllable outlays remained at 27 percent of total budget outlays).

Table 2

THE LONG TERM EFFECTS OF A LINE-ITEM VETO
(in billions of dollars)

	projected spending	Assuming 1 percent cut of all spending per year	Assuming 2 percent cut of "con- trollable" spending per year
1985	928	919	923
1986	1012	992	1001
1987	1112	1080	1093
1988	1227	1179	1200
1989	1342	<u>1277</u>	<u>1305</u>
Reduction in FY 1989 deficit:		\$65	\$37

Source: Calculations based on CBO budget projections.

It is not clear which constituency has the most to lose from a line-item veto. For instance, of the \$260 billion that could be made subject to the line-item veto in FY 1985, two-thirds would be defense spending. That means that for every \$1 of non-defense spending open to the line-item veto, the Pentagon would risk up to \$2. Moreover, the fastest growing segments of the budget, interest and entitlements (constituting 55 percent of the budget) would not be affected by the veto. Advocates of a strong defense are understandably cautious about a line-item veto that puts at risk twice as much defense spending as non-defense spending.

Cuts in Pork-Barrel Programs

The line-item veto could be an effective deterrent to the practice known as "logrolling." This occurs when members of Congress vote with one another on a quid pro quo basis to pass appropriations for programs benefitting local areas and interest groups--even though each program would fail to win a majority on its own. The result is that Congress passes appropriations bills loaded with costly amendments and riders that provide benefits to local constituencies.

A line-item veto specifically would allow for the President, the only official in the U.S. who must answer to the country as a whole, to cancel such spending on a case-by-case basis according to national interests. By returning these projects to Congress for reconsideration on an individual basis, the President would have the power to break the logrolling coalition. The line-item veto seems to be the best available defense against logrolling and omnibus spending resolutions.

OBJECTIONS TO THE VETO

Passing the Buck

The line-item veto is viewed by some, however, as just an excuse for Congress to abandon the search for a responsible appropriations process. Senator Lawton Chiles (D-FL), for instance, fears that Congress:

- would add to program after program, making all our constituents happy and never have to look at the bottom line. We could pass that responsibility over to the President. He would cut the bill back down to size and be the spoilsport.⁴

State experience gives some support to this view. Political observers argue that the Illinois legislature, for instance, adds funds to the budget in hope that the governor will veto them. But strong institutional constraints on total spending, such as balanced budget legislation, reduce such politicizing at the state level. At the federal level, a strong binding budget resolution would also reduce such opportunities. But it should not be forgotten that the line-item veto is an executive branch responsibility, with potentially significant political liabilities as well as benefits.

Presidential Pork-Barrelling

State experience also suggests that "just by having [the line-item veto], you can avoid getting a bill you don't want," says Robert Wilburn, former Pennsylvania budget secretary. "Exactly," retort opponents--the President could use the threat of a line-item veto to further his political interests. He could, for instance, hold hostage discretionary projects supported by Congress to force significant increases in defense spending, they argue, or he could target his veto against political opponents in election years.

Upsetting the Balance of Power

Many congressmen claim the line-item veto violates a literal interpretation of the Constitution--which vests spending power in

⁴ Congressional Record, August 4, 1983, p. S11729.

the Congress. No state or federal court has handed down any decision to this effect, and the Law Division of the Congressional Research Service has determined that Senator Armstrong's beefed-up rescission proposal would be constitutional.⁵ Since there seems to be little difference in principle between Armstrong's rescission proposal and a line-item veto, the veto's constitutional critics need to marshal better evidence to support their case. Moreover, there is historical precedent for a presidential refusal to accept specific appropriations. Between 1921 and 1974, the President possessed unilateral and absolute impoundment powers; he could refuse to spend appropriations without any explanation to Congress. The 1974 Budget Control Act stripped the White House of such power.

Opponents also fear that the line-item veto would grant nearly unilateral authority to the President, because he could veto a program if he could hold the backing of just one-third of one chamber of Congress. But if the veto could be overridden by a congressional vote of only fifty percent, as Senator Mattingly's proposal provides, this objection might be overcome--since any program of truly national importance presumably could win majority support.

The general argument that a line-item veto would circumvent the intent of the Founding Fathers holds less weight when viewed in the context of the structural changes that have altered the institutional balance of power firmly in favor of Congress. Moreover, although the Constitution specifically limits the president's veto powers to entire bills, it is not exactly clear, according to some experts, what the Founding Fathers meant by a "bill." In early years "bills" were limited in their scope of authorizations and financing--it is unlikely that the Founding Fathers envisaged the passage of single bills with \$316 billion of spending authority (a tenth of the nation's entire output). As Senate Finance Committee Chairman Robert Dole (R-KS) noted in congressional debate during the Carter Administration, "the growth of the size of appropriations bills has eroded the intent of the original veto provision of our Constitution and I believe that erosion should be reversed."⁶

The balance of power has also shifted away from the President in the last ten years as the rules on germaneness have become largely ineffective.⁷ The Constitution did not intend for Congress

⁵ Letter from Raymond Celada, Congressional Research Service, to Senator William Armstrong, October 17, 1983.

⁶ Congressional Record, March 10, 1977, p. S7199.

⁷ The standing rules of the Senate provide that "no amendment which proposes general legislation shall be received to any general appropriations bill, nor shall any amendment not germane or relevant to the subject matter of the bill be received...." Congress typically ignores these rules in order to attach politically controversial amendments to critical appropriations bills.

to attach non-germane authorizing language to critical appropriations bills in order to pressure the President into accepting those special interest additions.

Moreover, while Congress has assumed more extensive budgetary powers, it has failed to assume the corresponding fiscal responsibilities. The line item veto proposal offers a means to effect such fiscal responsibility, and to restore the balance of power existing prior to 1974. It is not a revolutionary attempt to create an "imperial" presidency.

STATE EXPERIENCE

Forty-three state governors now have line-item veto power over appropriations. These states adopted the veto after the Civil War and none of the states subsequently has withdrawn it--clear evidence that the veto is both popular and workable.

California Governor George Deukmejian "popularized" the line-item veto in the media last summer when he "blue pencilled" \$1.2 billion in legislative requests to avoid tax increases. But Deukmejian has not been the only governor to flex his line-item muscles. In Illinois, Governor James Thompson routinely slices about 3 percent off appropriations bills each year to keep the budget balanced. And during his eight years in Sacramento, Ronald Reagan used the line-item veto to reduce the legislature's spending plan by an average of 2 percent a year.

Learning From the States

The simple fact that no line-item veto law has been repealed in any of the 43 states that enacted it is clear testimony to its success and acceptance. But state experience also suggests that some problems would need to be solved before a federal version of the veto would be successful.

The primary hurdle would be the ambiguity over the term "item." Opponents of the proposal contend that the vagueness surrounding the term would mean granting the President uncertain power. The issue could be a stumbling block in the line-item veto initiative. Litigation in the states has centered on the precise meaning of the term "item" and whether it would encompass reductions as well as disapprovals. Contradictory decisions have been handed down in different states; for instance, in Oklahoma and Illinois.⁸ A bill that specifies that the President must approve or reject an entire line appropriation, might lead to such questions as: Would individual projects within a military construction or mass transit appropriation be subject to line-item

⁸ See State University v. Trapp, 28 Okla. 81, 1911, and People ex rel. State Bd. v. Brady, 227 Ill. 124, 1917.

scrutiny, or would the President be confined to action only on major appropriation headings?

Senate Majority Leader Howard Baker (R-TN) is concerned that this confusion would allow Congress to manipulate the language of bills to avoid the line-item veto. Says Baker: "I am really afraid if we had line-item vetos Congress would start sending the President appropriations bills with just one line."

Senator Mattingly's bill may deal with this problem by granting the President sweeping authority to reduce or disapprove any part of an appropriation. This would eliminate any ambiguities and potential court conflicts over presidential power, but it would also grant the President very extensive power over the federal pursestrings--and so is not likely to receive congressional approval in its present form. The senator has sought to balance this sweeping power, however. A recently introduced amended version of S. 1921 would allow Congress to override a line-item veto with a simple majority. It would also require the veto to be "reapproved" after two years.

CONCLUSION

The line-item veto faces considerable opposition from two groups within Congress. Legislators who wish to protect their ability to force acceptance of pork-barrel spending and non-germane authorizations have every reason to oppose the proposal. In addition, legislators who are concerned that critical defense systems could be the primary targets of future presidential vetos understandably hesitate supporting the device.

Senator Dole has reminded the first group that they have clear obligations to the country. "I do not impugn those members of the Senate who support such (pork-barrel)," says the Finance Committee chairman, "because it is our duty to do as much as we can for our states. However as a group I believe that we could all endorse an institutional change which would eliminate some of this."

The fears of the second group, however, must be weighed carefully in assessing the full political costs and benefits of the line item veto. Moreover, critics of the line-item veto should remember that the Constitution was written in the context of one set of political parameters and institutional conditions and that those parameters and conditions have changed. The budgetary process can only achieve the purposes of the Constitution if it is adapted to these new circumstances. A legislated line-item veto could restore the balance of power originally intended by the Founding Fathers, without intruding on the clear intent of the Constitution.

Most concerns over the constitutionality of the line-item veto appear to be little more than political rhetoric. The

President enjoyed unilateral impoundment powers for over fifty years during this century.

Yet the line-item veto proposal is still wrought with practical problems. Conservatives, for instance, must ponder the fact that a liberal President could block certain weapons systems approved by Congress. And the best mechanism for introducing such a veto is by no means clear. State experience suggests that the least problematic method of instituting a line-item veto would be to accompany it with a statutory rule granting the President the right to disapprove or reduce any part of any appropriation bill. Such language would carry the principle of executive review to its logical conclusion. A rule of this kind could be achieved by amending existing rescission powers such that a rescission would stand unless Congress explicitly overrode it. In order to make such sweeping executive review palatable, and to reduce the danger of a President preempting spending priorities, it would be prudent to allow congressional override with less than a two-thirds vote.

A line-item veto would be no fiscal panacea. It does not even address the primary federal spending problem--the spiraling growth of entitlements. Nor would it deal with many of the serious shortcomings of the congressional budget process. But by taking the handcuffs off the President in the appropriations process, the line-item veto would constitute an important first step toward fiscal responsibility.

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