

January 18, 1993

WHY YOU WERE RIGHT IN CALLING FOR A LINE-ITEM VETO

I strongly support the line-item veto, because I think it's one of the most powerful weapons we could use in our fight against out-of-control deficit spending.

Bill Clinton, quoted in "Just Do It," *The Wall Street Journal* Editorial, February 26, 1992.

EXECUTIVE SUMMARY

Throughout the campaign, President-elect Clinton, you called on Congress to give the President a line-item veto, characterizing yourself as "strongly in favor" of the power.¹ An item veto unquestionably would aid efforts to reduce wasteful spending and cut the deficit. Using "impoundments" (an authority, since revoked, to refuse to spend appropriated funds) Lyndon Johnson was able to cut 6.7 percent of total federal spending in 1967. That percentage today would amount to \$98.8 billion, or nearly one-third of the federal deficit for 1993. Your commitment to "reinventing government" offers another compelling argument for a presidential item veto. Previous presidentially sponsored government reform efforts frequently have been frustrated by congressional amendments to spending bills and other "must pass" legislation. Pressing for an item veto in the face of congressional opposition will provide an early test of your determination to reform government and control spending.

Within days of your election victory, Democratic congressional leaders were openly opposing your call for an item veto.² Yet Congress's profligate, pork barrel spending and its practice of stuffing hundreds of provisions into omnibus, "must sign" bills provide the best arguments for a line-item veto. House Speaker Tom Foley has proposed a compromise, known as "enhanced rescission," which would allow the President to propose spending cuts subject to a simple majority vote in Congress. While enhanced rescission would be a step in the right direction, partially restoring presidential impoundment authority lost twenty years ago, it is not an acceptable substitute for a full-fledged line-item veto. Rescissions are easier to defeat than vetoes (requiring a 50 percent rather than a two-thirds majority), they apply only to spending figures in appropriations bills (excluding the vast majority of legislation passed), and Congress could avoid tough votes by changing rescission ground rules. Only a genuine line-item veto will give

¹ Associated Press wire service stories, April 29, June 8, and June 21, 1992.

² Senate Majority Leader George Mitchell, "Face the Nation," November 8, 1992.

you the tools necessary to reduce wasteful spending and to defend against inappropriate congressional meddling in the management of the executive branch.

To fulfil your commitment to the line-item veto, you should take the following actions beginning immediately:

- Action 1: Strongly restate your desire for a line-item veto in your inaugural address.**
- Action 2: Create a task force including key members of your economic and legislative teams to secure adoption of a line-item veto constitutional amendment.**
- Action 3: Include a line-item veto amendment in your legislative package for enactment in the first 100 days of your Administration.**
- Action 4: Continue discussions with congressional leaders on enhanced rescission, but only as an interim step toward a constitutional line-item veto.**
- Action 5: Refuse to sign a debt limit extension unless coupled with a package of budget reforms, including the line-item veto.³**

THE NEED FOR REFORM

Governors in 43 states have a line-item veto, as you did as Governor of Arkansas. Of present and former governors who responded to a recent survey, 93 percent describe the item veto as a useful tool for balancing the budget. Some 92 percent of the state executives believe that a line-item veto would help the President restrain federal spending.⁴ An item veto works to limit spending because executive officials, representing broader constituencies, are often willing to oppose special interest spending inserted in legislation by powerful lawmakers or narrow coalitions. Even when it is not used, the threat of an item veto can increase the executive's negotiating leverage with the legislature.

While the federal Constitution does not include a line-item veto, Presidents traditionally were recognized as possessing an inherent power to "impound" or refuse to spend unneeded funds. Impoundments were not even subject to congressional votes or approval. That power was stripped by Title X of the Budget Act of 1974. This and other reforms in the 1974 Act, many of which reduced presidential budgetary powers, were coincident with, and arguably caused, the emergence of the permanent, structural federal deficit. The total deficit was only \$6 billion in 1974. The smallest deficit since was \$40 billion in 1979.⁵

That the budget process needs reform seems beyond argument, and there is a remarkable consensus among the public, governors, and both parties' presidential candidates in favor of the line-item veto as one element of reform. Only among Congress's Democratic leaders is there implacable, and apparently self-interested opposition to a line-item veto. Senate Majority Leader George Mitchell spoke out against the line-item veto just days after the election, and de-

³ See Scott A. Hodge, "How to Get Spending Under Control," Heritage Foundation *Memo to President-Elect Clinton*, No. 8, January 15, 1993 and Daniel J. Mitchell, "An Action Plan to Create Jobs," Heritage Foundation *Memo to President-Elect Clinton*, No. 1, December 14, 1992.

⁴ "How Governors Think Congress Should Reform the Budget: Results of a Survey of U.S. Governors and Former Governors," Cato Institute *Policy Analysis*, December 9, 1992.

⁵ Historical Tables, *Budget of the United States Government*. Figures in nominal dollars.

clared himself only "less opposed" to Speaker Foley's compromise proposal of enhanced rescission.⁶ Senate Appropriations Committee Chairman Robert C. Byrd has vowed emphatically that he is "opposed to any legislation that would diminish the Congress's Constitutional role with respect to the powers of the purse."⁷ Even Vice President-elect Al Gore voted against every line-item veto proposal before the Senate during his tenure, a total of six votes between 1985 and 1992.⁸ The Vice President-elect also voted against an enhanced rescission proposal similar to that now being put forward to Speaker Foley.⁹

HOUSING AND URBAN PORK

The story of pork-barrel politicking and management interference at the Department of Housing and Urban Development (HUD) offers one of the clearest case studies of the need for a line-item veto. You have spoken highly, Mr. Clinton, of HUD Secretary Jack Kemp's approach to better meeting housing and other urban needs. While Kemp's ideas received too little support within the Bush Administration, it was Congress which directly opposed and frustrated most of Kemp's proposals.

In 1989, Congress investigated allegations of influence-peddling involving the distribution of non-competitive grants by former Secretary Samuel Pierce and other HUD officials. Some officials were criminally prosecuted, and an Independent Counsel investigation of the scandal continues. Many of the questionable grants were made through the "Secretary's Discretionary Fund," so incoming Secretary Kemp moved to abolish the fund and end discretionary grants throughout the Department, making all awards on a competitive basis.

Rather than agreeing to Kemp's reforms, Congress assumed control of the scandal-ridden fund and began making grants of its own. Now known as the "Special Purpose Grants" fund, it is exclusively at the disposal of Members of Congress. Grants from this fund are distributed not on the basis of demonstrated need, likely effectiveness, or other objective standards, but according to the power and political preferences of members on the committees that fund HUD. Since Congress seized it in 1989, the fund has grown from \$10 million to \$260 million for fiscal year 1993,¹⁰ a 2,600 percent increase in politically tainted pork.

Kemp called it "disgraceful for politically influential lawmakers to insist on earmarking funds for pet projects when [he had] been trying to rid the department of favoritism and scandals...."¹¹ It is doubly disgraceful to do so after prosecuting HUD officials for doing exactly the same thing. The real scandal at HUD is not the former officials who are being investigated and prosecuted, but the fact that Congress acts in precisely the same manner legally as a matter of course

6 Transcripts of CBS's "Face the Nation," November 8, 1992.

7 Eric Pianin, "Byrd Opposes Line-Item Veto Proposal," *The Washington Post*, November 18, 1992.

8 Senate record vote numbers: 156, 157, 158, 99th Congress, First Session, June 18, 1985; vote #294, 101st Congress, First Session, November 9, 1989; vote #111, 101st Congress, Second Session, July 6, 1990; vote #33, 102nd Congress, Second Session, February 27, 1992.

9 Senate Record Vote Number 270, 99th Congress, Second Session, September 19, 1986.

10 HUD summaries of Appropriation Conference Reports, FY 1989-93. All budget figures are in nominal dollars unless otherwise noted.

11 "Kemp Lashes Out at Hill's Projects, Secretary Vows to Fight 'Disgraceful' Earmarking of HUD Funds," *The Washington Post*, November 27, 1989.

Following are a few examples from the 1993 special purpose grants fund:¹²

- ◆ **\$3 million, in part for design and planning for a western frontier-Oregon Territory historical center;**
- ◆ **\$2.5 million for “infrastructure demolition and repair” in wealthy Marin County, California;**
- ◆ **\$1.2 million for “continued infrastructure development” in the “Hawaiian Home Lands” and \$1.3 million in continued assistance for two sugarcane mills (These have been ongoing annual HUD handouts);**
- ◆ **\$1 million for “neighborhood improvement in the Hilltop section of Davenport Iowa”;**
- ◆ **\$2.2 million for single room occupancy housing in Portland, Oregon (\$25,000 per room);**
- ◆ **\$1.5 million to renovate each of two country courthouses in Alabama;**
- ◆ **\$1 million each to restore two theaters in Georgia;**
- ◆ **\$250,000 for a water tower at an industrial park in Joplin, Missouri;**
- ◆ **\$1.9 to the vacation haven of Mackinac Island, Michigan, “to restore historic buildings and for other municipal purposes”;**
- ◆ **\$1.5 million for a visitor center in western New Mexico.**

The list goes on and on, Mr. Clinton, for a dozen pages—hundreds of grants worth hundreds of millions of dollars. Some may even go for worthy projects. There is really no way for the average taxpayer to know. In one instance, an application for funding under a \$1 million report grant labeled “Housing and other purposes” was made for tennis courts in an upscale area. (The grant was ultimately refused by the Federal Housing Commissioner.¹³)

There appears to be no rational basis for funding a water tower for one industrial park, or revitalization efforts for one downtown area absent a broader, national program for industrial or commercial development. There is, however, an obvious explanation for why these projects were favored over others: all of the projects listed above and the vast majority of special purpose grant projects are in districts or states represented by members of the appropriations subcommittees which fund HUD or of the parent committees. For instance, California receives the largest share of special purpose grants funding, \$25.2 million—not surprising, as it is the largest state. The second largest share of funding, however, \$19.25 million, went to tiny West Virginia, home of House HUD subcommittee member Alan Mollohan, and of line-item veto foe and Senate Appropriations Committee Chairman Robert C. Byrd. In comparison, Arkansas, a slightly larger state with similar economic development needs received only \$1.25 million. Toledo, represented by House HUD subcommittee member Marcie Kaptur, received \$3.5 million in grants while nearby and much larger Detroit got only \$2.9 million. Cleveland, home of se-

¹² For a complete listing, see House Report 102-902 (Conference Report on VA/HUD Appropriations), Amendment No. 83, pp. 21-31.

¹³ Account of the former Executive Assistant to the Federal Housing Commissioner.

nior subcommittee member Louis Stokes is targeted for \$8.5 million in funding, far more than the larger cities of Chicago and Philadelphia.

REINVENTING GOVERNMENT—IF YOU CAN

While the irrationality and waste of distributing federal funds in this fashion presents a compelling case for the item veto, the way in which Congress treats executive branch policy proposals presents an even stronger argument. Within the 1993 HUD funding bill, for instance, are no fewer than 137 specific policy instructions, frequently referred to as “riders,” having to do with the administration and management of HUD and other agencies. Many appear to be so reasonable as to be unnecessary and certainly unobjectionable. Others, however, are quite obviously petty and counterproductive. Dozens unilaterally alter contract terms or cancel debts owed to the federal government. In two separate places, the bill mandates that the “Office of Lead-based Paint Abatement” be located in the office of the Secretary and staffed and funded at a designated level. While lead poisoning is a serious problem, having a congressional subcommittee designate the location and staffing of a HUD office, apparently in opposition to the judgment of HUD experts, is hardly the best way of addressing it.

Saying who gets which office is just the tip of the iceberg. Far more important to Kemp’s efforts at HUD than eliminating specific questionable grants was an overall management reform that would allow the department to serve the needy better and more efficiently. Largely through restrictions in earlier appropriations bills, Congress stymied Kemp at every pass. First, Congress divided HUD into seven components for funding purposes, specifying spending and employment levels for each. As a result Kemp was stopped from any significant reorganization of his department. More alarmingly, the appropriations subcommittee stopped Kemp from establishing a department-wide database which would have improved financial management and reduced opportunities for fraud. Congress also prohibited Kemp from moving employees, even temporarily, into an organization intended to help clean up the management mess he inherited.¹⁴

So, faced with the task of reversing criminal mismanagement, low morale, and inefficiency, Congress told Kemp he could not reorganize his department, he could not computerize his records, and he could not assemble a team of agency employees to improve departmental management. Unfortunately, Congress is likely to be no less willing to block Clinton Administration reorganization efforts than it has been to oppose the line-item veto proposal. A President lacking a line-item veto who objects to a few of the hundreds of management and statutory restrictions routinely included in appropriations bills has the choice, in the case of HUD, of holding up funding for the entire Veterans Administration, NASA, HUD, and several other agencies, or swallowing hard and accepting the restrictions. This process will be crippling to any effort to reinvent government by reforming operations and changing employee incentives. Please note, Mr. President-elect, that no version of enhanced rescission authority would allow you to challenge a single one of these hundreds of policy and management restrictions.

MORE PORK AND MORE MICROMANAGEMENT AT DEFENSE

Pork-laden appropriations bills, unfortunately, are the rule rather than the exception. The Department of Defense (DoD) appropriations contains hundreds of millions worth of pork-barrel line items, including:

¹⁴ See Chapter Four in The Heritage Foundation’s book, *The Ruling Class* by Eric Felten (Washington, D.C.: Regnery Gateway, 1993).

- ✓ \$100 million for a fisheries grant program;
- ✓ \$7 million to clean up “the National Presto Industries Eau Claire Facility”;
- ✓ \$10 million for a “National Guard Outreach Program in the Los Angeles Schools District”;
- ✓ \$5 million for electric vehicle projects in Hawaii and Sacramento, California;
- ✓ A laundry list of 21 grants to specified universities in amounts ranging from \$500,000 to \$15 million;
- ✓ Report instructions to retain indefinitely the same number of podiatrists as were on active duty in 1990, despite significant cuts in overall personnel levels.

Also like HUD, Congress uses the “must sign” appropriations bill as an opportunity to force hundreds of programmatic, management, and statutory instructions—244 in the case of the 1993 appropriation—essentially unrelated to funding levels on the Defense Department. Secretary-designate Les Aspin’s most serious obstacle in reforming the department will be his former colleagues on Capitol Hill. Without a line-item veto, the hundreds of strings represented by these appropriations “riders” will be woven into a straightjacket for departmental management.

Congress was not always so active in dictating executive branch management decisions. Most of those 244 defense dictates were contained in 168 “general provisions” appended to the appropriation. There were only 64 such instructions in 1970. Requirements for DoD reports to Congress, another method of congressional control, grew even more dramatically, from only 36 in 1970 to 861 in 1990, an increase of 2,400 percent.¹⁵ Secretary Dick Cheney dramatically presented mountainous piles of these reports, calling for a reduction early in his tenure to little avail.

Shouldn't Congress Have Its Way?

Opponents of the line-item veto, and of enhanced rescission, cite the congressional power of the purse. The problem with this argument is that many troublesome pork and micromanagement provisions would not survive open votes in the House and Senate as part of the actual legislation. In order to enhance their power to make funding and management decisions, congressional committees have come up with procedures to either avoid open debate or to skirt the legislative process in an extra-constitutional fashion.

To circumvent obstacles inherent in the legislative process, such as recorded votes, Congress often includes pork “earmarks” in committee or conference reports. Reports are documents intended to explain legislation and give guidance in carrying out provisions of the law. These reports are written by staffers, often unsupervised by elected representatives. Furthermore, they cannot be voted on or amended by the full House or Senate. Congress insists, however, that executive agencies give these reports the force of law, going so far as to instruct agencies to comply with the reports through provisions in the actual appropriations legislation.

¹⁵ "White Paper on the Department of Defense and the Congress," Report to the President by the Secretary of Defense, January 1990.

Another opportunity for unaccountable and unreviewable legislation occurs in the conference committees which meet to iron out differences between House and Senate versions of a bill. Only a few Members, drawn almost exclusively from the committees that originated the legislation, are appointed as conferees. In practice the members of a conference committee have wide latitude to change the legislation as they see fit, and they frequently make significant, politically sensitive changes in legislation or add pork. Some of those changes amount to congressional voting fraud, by removing nearly identical provisions approved by both houses of Congress. Because the conference takes place after the legislation is through the amending process, and takes place in closed meetings rather than on the House and Senate floors, all manner of objectionable provisions can be added in secret, without votes. And when the conferees are finished, there is rarely enough time to review the often massive bills before they are voted on a final time. The conferees' staff then put together yet another "report," adding additional pork and micromanagement instructions for the executive branch.¹⁶

This entire process, and the committee and conference reports in particular, amount to the enactment of laws outside the constitutional legislative process. It is the congressional insistence on shortcutting constitutional and democratic principles, often cloaked in a claim of congressional prerogatives, that makes an alteration in constitutional arrangements, such as the line-item veto, essential. The President needs a line-item veto to combat Congress's extra-constitutional power grabs.

ENHANCED RESCISSION: IT WON'T CUT IT

The enhanced rescission proposal that Speaker Foley has offered as a compromise has several weaknesses and loopholes that make it unacceptable as a substitute for a genuine line-item veto. Most notably, a simple majority of either House of Congress could defeat a rescission, as opposed to a two-thirds majority in both houses required to override a veto. (In comparison, Congress did not have a say at all in impoundment decisions prior to 1974.) The Foley proposal is apparently based on H.R. 2164, which was introduced in the last Congress by Democratic Representative Tom Carper (now Governor of Delaware), and which passed the House on a 312-97 vote on October 3, 1992. That bill would have allowed the President to send a rescission proposal to Congress within three days of enactment of an appropriation act. Special procedures seek to guarantee a rapid vote on the President's proposal without amendments.

President Bush's experience with a similar provision already included in the 1974 budget act may be instructive. In April 1992 Bush sent four separate rescission packages to Congress under a procedure which purportedly allowed a straight up or down vote on each proposal. Instead the House and Senate Appropriations Committees reported packages combining the separate rescission proposals, accepting some of the President's cuts, and replacing others with congressional preferences. The House concocted its own version of the President's original proposals, somewhat different than what the President actually sent, claiming that allowing a vote on the one combined package met the requirement for separate consideration of the four presidential proposals. The Senate Appropriations Committee simply reported the President's proposals to the floor and then ignored them in preference to its own combined package.

More revealing than the procedural shenanigans were the comments of Senate Appropriations Committee Chairman Byrd in reaction to the President's exercise of powers that Congress had explicitly granted. "It might be the better part of wisdom not to push this thing," Byrd

¹⁶ See the "Sleight of Hand" and "Legislating Backwards" chapters of The Heritage Foundation's book, *The Ruling Class* by Eric Felten (Washington, D.C.: Regnery Gateway, 1993).

noted, warning that "the farther down the road it gets the meaner it's going to get. And its not going to do the president any good, and its not going to do this institution any good."¹⁷

While H.R. 2164 had several provisions which seek to prevent the type of procedural gamesmanship which surrounded the Bush request, those provisions are applied only as part of House and Senate rules. Those rules can be changed by the House or Senate alone at any time, and despite disclaimers to the contrary, they can also be ignored or temporarily overridden at any time. Even if Congress felt compelled to play by the rules it had set, it might effectively amend a President's rescission package by reporting a similar but separate bill, defeating the President's proposal and passing its own alternative.

Even absent procedural curveballs, the proposed enhanced rescission authority is very limited. It applies only to spending amounts in appropriations bills. Changes in entitlement or tax law, conceivably costing billions, would be off limits, as would pork provisions in authorizing legislation. The President could offer only one package, lumping together separate objections in one bill, and that only immediately after the bill is signed. In this respect enhanced rescission is far weaker than the impoundment authority which was stripped from the President in 1974: under it, cuts could be made separately and at any point during a fiscal year, when it might become evident that funding initially approved was unnecessary.

The greatest deficiency of the enhanced rescission approach is that it does not reach the critical policy and managerial provisions in appropriations bills, much less in other legislation. For an Administration in which reforming government may be as critical as, and even a precondition to, cutting spending, this failure is critical. While an enhanced rescission proposal would be a step in the right direction for spending control, it is no substitute for a line-item veto.

CONCLUSION

Mr. Clinton, your support for a presidential line-item veto was an important element of your appeal as a fiscally responsible New Democrat. Securing that power in office is even more critical to your success in reducing deficit spending, and to reforming operations of the executive branch. As long as Congress is second-guessing the smallest decisions of your appointees, your attempt at "putting people first" will be reduced to bureaucratic business as usual in short order. Despite opposition among key Democrats in Congress, you must persist in your commitment to a line-item veto. Aside from the intrinsic merits, standing up to Washington insiders will be an outstanding public demonstration of your determination to break with the special interest politics of the past. While the ratification process for a constitutional amendment would delay implementation of the line-item veto power, the ratification process would provide a marvelous opportunity for your Administration to take its case for reform to the American public.

Your opportunity to push this reform is now. The longer you wait, the freer Congress will feel to resist your proposals. In addition, several specific requirements of the budget calendar provide irreplaceable opportunities to push a line-item veto this spring. Securing a line-item veto will require a vigorous action plan beginning on Inauguration Day. Key elements of this plan should include:

¹⁷ Quoted in *Congressional Quarterly*, "Congress Tries to Outdo Bush in Anti-Pork Campaign," by George Hager, May 2, 1992, pp. 1148-1150.

Action 1: Strongly restate your desire for a line-item veto in your inaugural address.

Lack of a firm response in the face of outspoken congressional opposition could lead to a public perception that you are abandoning campaign commitments under pressure from Washington insiders.

Action 2: Create a line-item veto task force composed of key members of your economic and legislative affairs teams to come up with an action plan for congressional approval of a line-item veto constitutional amendment within the first 100 days of the Administration.

Creation of a specific task force is critical, as you must communicate to your own economic and legislative advisors, many of whom are from Washington, the importance of the line-item veto in your efforts to control deficit spending, reinvent government, and keep your commitments to the American people. Resistance or tepid support from within your own Administration will be as damaging to your efforts to secure a line-item veto as congressional opposition.

Action 3: Include a line-item veto constitutional amendment in the legislative program submitted to Congress for enactment during the first 100 days of your Administration.

Failure to push the proposal immediately will allow public support to dissipate and allow opponents to organize opposition.

Action 4: Continue discussions with congressional leaders on enhanced rescission authority only as an interim measure which may be useful during the amendment ratification process.

In order to restrain government spending most effectively and to protect your ability to reform and reorganize the government, a constitutional amendment providing a line-item veto for all legislation is essential. Enhanced rescission measures, limited to appropriation figures only, exclude entitlements and (in most cases) tax measures, which are key to deficit reduction. Neither would enhanced rescission allow you to address the hundreds of policy and management restrictions routinely added to appropriations and other legislation.

Action 5: Propose a package of budget reforms, including the line-item veto, to be enacted as a part of the debt limit extension that must be enacted in March.

You should announce publicly that you will not sign a debt-limit extension made necessary by decisions of previous Administrations and Congresses unless the extension is accompanied by acceptable budget reforms. Promises for votes on reforms at a later date are unacceptable. Both versions of Gramm-Rudman were enacted as a part of debt limit increases. Forwarding your own package will head off inevitable congressional demands to again revise budget procedures.)

During the campaign, you declared "I'm a Democrat who believes in the line-item veto and believes in cutting out wasteful government spending." Members of Congress have promised real reforms. Now you and Congress have an opportunity to make good on reform promises with enactment of a line-item veto.

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