

# WebMemo



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## The President's Proposed Line-Item Veto Could Help Control Spending

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President George W. Bush has asked Congress to enact the “Legislative Line-Item Veto Act of 2006.” This proposal, sponsored in the Senate by Majority Leader Bill Frist (R-TN) and in the House by Representative Paul Ryan (R-WI), bypasses the constitutional concerns that led the Supreme Court to rule the Line Item Veto Act of 1996 unconstitutional just one year after President Bill Clinton used it to strike \$600 million in spending. While this new line-item veto could help to control spending, it alone will not solve the problem of runaway spending. While working out the details of this legislation with Congress, the President should also use the tools already at his disposal, such as the veto and his executive power.

**How It Would Work.** The Line Item Veto Act of 1996 allowed the president to veto specific provisions that allocate discretionary budget authority, increase entitlement spending above the baseline, or create limited tax benefits.<sup>1</sup> This operated as a regular veto, with Congress needing a two-thirds vote to override it.<sup>2</sup> The Supreme Court struck down this authority, ruling that it violated the separation of powers. With a straightforward line-item veto forbidden, crafting an effective tool to eliminate wasteful, unnecessary individual spending provisions without running afoul of the Court now requires some creativity.

Thus, President Bush does not propose to create a traditional veto for line items, as the 1996 law did. Rather, his proposal would enhance the president's existing rescission authority. Rescission is the pro-

cess whereby the president sends legislation to Congress to cancel budget authority that was previously enacted but not yet spent. Like any legislation, rescission bills must be passed by the House and Senate and then signed by the president. Currently, however, Congress can kill a rescission request by voting it down or simply ignoring it. The President's Legislative Line-Item Veto Act of 2006 improves on existing rescission authority in several ways:

- The president could “veto” entitlement changes and special tax breaks, as well as all discretionary appropriations;
- Congress would have to act on “veto” packages within 10 days of the president submitting them;
- Congress would have to hold up-or-down votes that could not be amended on the “veto” package bills;
- Senators could not filibuster a “veto” package bill; and
- Only a simple majority would be required to pass a “veto” package bill.

To be sure, this proposal is not as strong as the original line-item veto because it gives Congress the final say over any changes to spending and taxation.

This paper, in its entirety, can be found at:  
[www.heritage.org/research/budget/wm1021.cfm](http://www.heritage.org/research/budget/wm1021.cfm)

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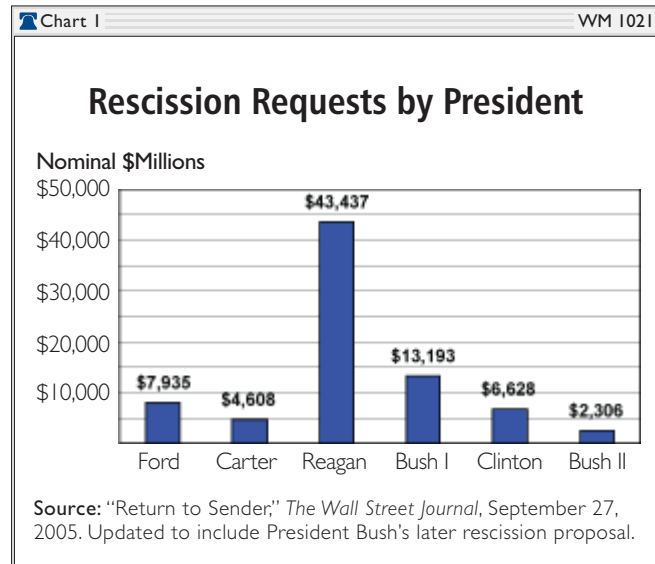
Nonetheless, it would be an improvement over existing authority and could help restrain spending. For that reason, budget experts have sought to strengthen presidential rescission authority for many years.<sup>3</sup>

### Congress Would Likely Block Most Vetoes.

While the original line-item veto actually vetoed spending provisions, the President's proposal gives Congress the final say over any changes, as the Supreme Court requires. But if majorities of both chambers of Congress passed a spending bill, would those same majorities agree to rescind items from that bill a few weeks later? Most spending and tax bills are the result of complex negotiations between various groups in the House and Senate, and removing any provision could fracture negotiated agreements. In all likelihood, lawmakers would agree to defend one another's spending priorities against any rescission request the president might send to Congress.

**Pork Projects May Not Be Affected.** Even with a line-item veto, Presidents are limited to vetoing items that actually appear in bills. Yet nearly all pork projects are not actually in legislation but in conference and committee reports and even in press releases.<sup>4</sup> These instructions are not part of the bills and so are not legally binding. Still, the federal agencies that implement the law nearly always follow them. Proposals now before Congress would move earmarks from conference reports to the legislative text itself, providing the president with the opportunity to strike these projects with a veto or rescission.

But the President can take bold action now, without waiting for his line-item veto or for earmarks to migrate back to bills' legislative text. President Bush could immediately eliminate the majority of pork projects with an Executive Order mandating that



the Office of Management and Budget and all federal agencies implement only provisions that appear in actual legislative text, and not provisions in non-binding reports. Additionally, the President should veto any bill that contains express provisions for earmarks, regardless of the bill's subject.

**President Bush Has Not Sufficiently Used His Veto and Rescission Authority.** President Bush already has the authority to veto entire spending bills and to send rescission requests to Congress. However, he has not vetoed a single bill, and last October's \$2.3 billion rescission proposal, to offset some Gulf Coast reconstruction spending, was his first and only. By contrast, the other five presidents who have had rescission authority each proposed between \$5 billion to \$43 billion in rescissions. (See Chart 1.) From 2001 to 2006, federal spending has surged 45 percent, which includes an estimated 10 percent spending hike for 2006. These increases have occurred across the board, from education (up 137 percent) to Medicare (up 58 percent) to defense

1. See "The Line-Item Veto Act After One Year," Congressional Budget Office, April 1998, located at <http://ftp.cbo.gov/showdoc.cfm?index=454&sequence=0>.
2. If Congress disagreed with a line-item veto, it could pass a "disapproval bill" within 30 days cancelling the change. However, the president would likely veto any disapproval bill, thus preserving the original line-item veto. Therefore, the more realistic way for Congress to challenge a line-item veto was with a traditional two-thirds vote to override the veto.
3. See Brian M. Riedl "What's Wrong with the Federal Budget Process," Heritage Foundation *Background* No. 1816, January 26, 2005, at [www.heritage.org/Research/Budget/bg1816.cfm](http://www.heritage.org/Research/Budget/bg1816.cfm).
4. See Ronald Utt, "Yes, Mr. President, Cancel the Earmarks," Heritage Foundation, forthcoming.

(up 76 percent).<sup>5</sup> The President's line-item veto proposal could help slow this growth, but it is no substitute for the traditional veto and other steps that the President could take today.

**Conclusion.** The President's line-item veto proposal, though not a traditional veto, could be a useful tool to rein in excessive or wasteful spending. While the President's proposal may help to reduce spending marginally, it is no substitute for aggressively using existing presidential powers. So while

Congress should act swiftly on the President's proposal, the President should also demonstrate his intention to use all of the tools available to him by vetoing any bill that contains an express earmark and instructing the federal government to implement only binding spending legislation.

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5. See Brian M. Riedl, "Federal Spending: By the Numbers" Heritage Foundation *WebMemo* No. 989, February 6, 2006, at [www.heritage.org/Research/Budget/wm989.cfm](http://www.heritage.org/Research/Budget/wm989.cfm).