



***The Line –item Veto:
A Needed Expansion of Presidential Power?***

Purpose: The framers devised the legislative process in Article I Section 7 of the Constitution granting the president the power to “return” or veto bills, and the Congress the ability to override that veto. However, in recent decades with the huge expansion of government spending sometimes without effective accountability, a number of Republicans and Democrats alike have considered giving the president the line-item veto power over appropriations bills. Others worry that giving an already powerful chief executive additional power at the expense of the Congress would have serious repercussions. In this lesson, students will revisit the concepts of separation of powers, and evaluate the benefits and liabilities of a presidential line-item veto. This may be used a stand alone lesson, or in conjunction with other YLI lesson plans like *Hail to the Chief: The Power of the American Presidency*, *The Presidency on Trial: Assessing the Limits of Presidential Power*, and *The Powers of Congress*.

Objectives:

1. Students will review the constitutional concepts of *separation of powers* and *checks and balances* focusing on the veto power.
2. Students will define and evaluate the constitutional and political implications of the presidential line-item veto.
3. Students will research and debate the benefits and costs of a line-item veto.
4. Students will construct a line-item veto constitutional amendment.
5. Students will interpret and analyze political cartoons.

Key Words:

line-item veto

separation of powers

checks and balances

Materials:

1. Overhead or student handout: “*Veto Accomplished*” Political Cartoon
2. Overhead: *Separation of Powers*
3. Overhead: *Checks and Balances*
4. Overhead: *Presentment Clause*
5. Overheads: *So....what’s a “line-item veto?”*
6. Student handout: *Debating the Merits of the Line-item Veto: An Open Forum*
7. Supporting resource: *Presidential Powers* PowerPoint.
8. Student handout: *Open Forum: Article Analysis*
9. Student handout: *Item Veto* Article
10. Student handout: *Fact Sheet: The Legislative Line-item Veto*
11. Student handout: *Senator Robert Byrd’s Speeches in Opposition to the Line Item Veto* article
12. Student handout: *House “Line-item Veto: Proposal Invites Abuse by Executive Branch* article
13. Student Handout: *Making Connections: Crafting a Line-item Veto Constitutional Amendment*
14. Overhead or student handout: *Line-item Veto Political Cartoons*



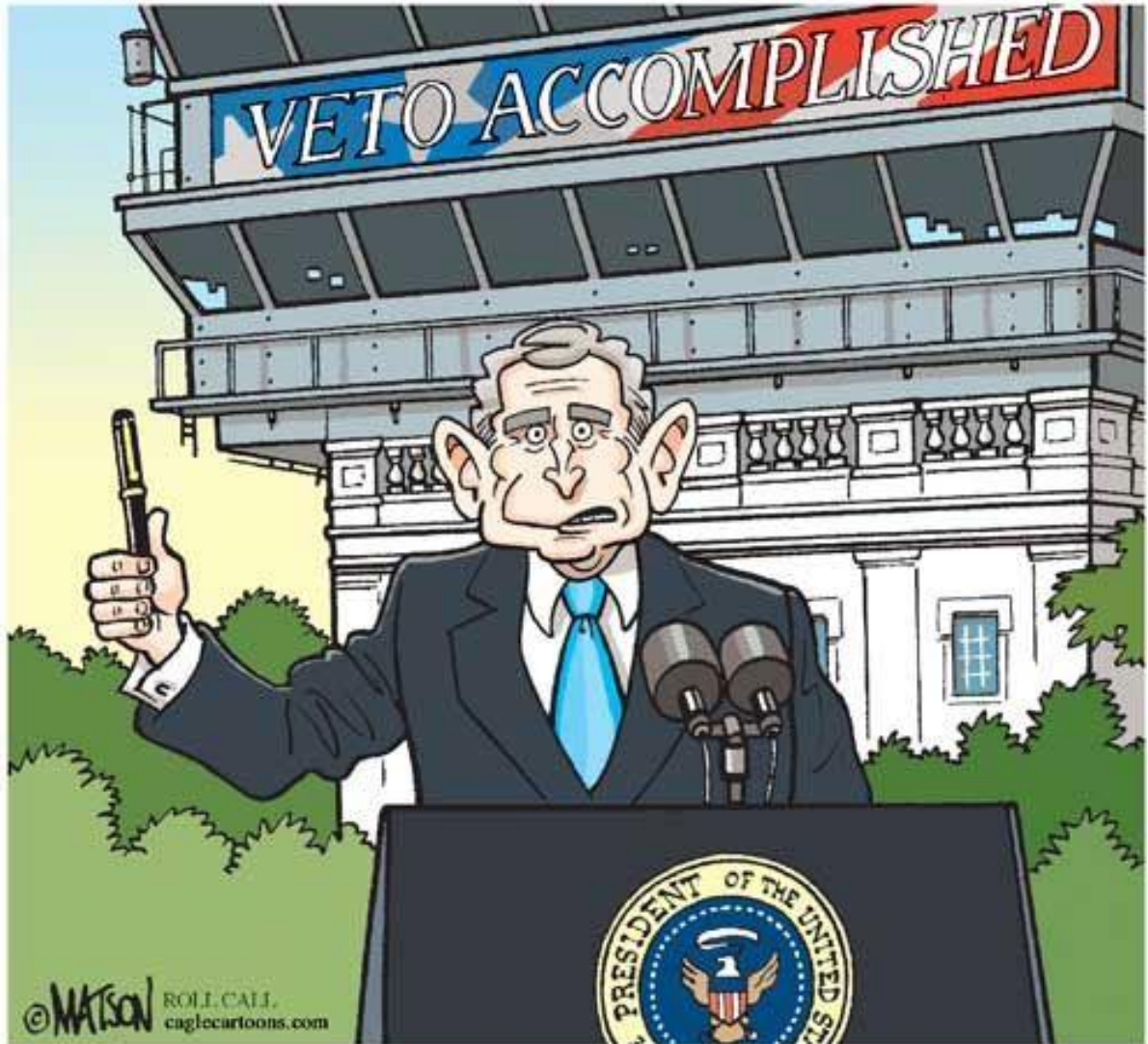
Procedure:

1. **Warm-up: The President's Veto Pen** – This activity reacquaints students the concept of presidential veto.
 - a. Project the *Veto Accomplished* political cartoon via overhead or PowerPoint, and have students analyze the cartoon related to the concept of presidential veto. [Note: Teachers may also choose to copy the cartoon and questions as a handout for students to discuss in small groups].
 - b. Students should address the questions below either orally or in written form:
 - I. Define the term “veto.” [*veto – The constitutional procedure by which the President refuses to approve a bill or joint resolution, and thus prevents its enactment into law; veto can be overridden by 2/3 vote of both houses of Congress.*]
 - II. Identify the symbols portrayed in the cartoon and analyze what they represent. What is the significance of the President's pen?
 - III. What is the political/historical context of the cartoon? [*President Bush exercised his veto power for the first time in July, 2006 to veto the Stem Cell Research Enhancement Act. The cartoon is a parody of President Bush's speech in May, 2003 when he declared the end of major combat operations in Iraq.*]
 - IV. Brainstorm reasons why a president would exercise his/her veto power.
Possible responses:
 - the president believes the bill is unnecessary or unwise
 - the bill conflicts with the President's policies or agenda (ex: GWB's veto of Iraq funding resolution)
 - the President disagrees with the bill on moral or ideological grounds (GWB's veto of Stem Cell Research bill)
 - the President receives pressure from interest groups, political party to veto bill
 - V. Critical Thinking: “If you were president, under what circumstances would you use the veto pen?”
2. **What Does the Constitution Say About the Presidential Veto?** – To understand the Constitutional implication of a line-item veto, students will revisit important concepts.
 - a. Project the *Separation of Powers* overhead or PowerPoint, and ask students to define the constitutional concept of “separation of powers.” [*separation of powers - A way of dividing power among three branches of government in which members of the House of Representatives, the Senate, the president, and the federal courts are selected by and responsible to different constituencies*].
 - b. Have students identify the main function of each branch. [*legislative branch = make laws; executive branch = carry out the laws; judicial branch = interpret the laws*].
 - c. Then review the concept of “checks and balances” by projecting the corresponding overhead slide or PowerPoint., and discuss examples of how each branch checks the other two. Laser in on the “presidential veto” and “congressional override.” [*Checks and Balances - A government structure that gives each of the three branches of government some degree of oversight and control over the actions of the others*].
 - d. Project via overhead/PowerPoint or handout *Presentment Clause*. Ask students to interpret the clause and address the corresponding questions.
 - e. NOTE: It is important to emphasize the fact the Constitution in the Presentment Clause does not allow the president to “return” or veto a portion of a bill while approving other provisions – an important comparison to the proposed line-item veto.



3. **So....What's a Line-item Veto?** - Using *So...what's a Line-item Veto* overhead or PowerPoint, define the term "line-item veto," and discuss the implications of the Line Item Veto Act of 1996 and subsequent Supreme Court decision in *Clinton v. New York City*.
4. **Open Forum: Debating the Merits of the Line-item Veto** - In an in-class open forum, students will explore the benefits and possible unintended consequences of a presidential line-item veto.
 - a. Using the *Line Item Veto* overhead or PowerPoint, define the term "line-item veto," and discuss the implications of the Line Item Veto Act of 1996 and subsequent Supreme Court decision in *Clinton v. New York City*.
 - b. Pass out the student handouts *Debating the Line-item Veto: An Open Forum*, and *Open Forum: Article Analysis*. Briefly go over the directions and divide the class into two teams: pro and con. Students should then read the four articles to find points to support their teams' arguments.
 - c. Conduct the open forum.
 - d. After the open forum ends, bring the class back for the debriefing discussion.
 - What do you see are the strengths of the "pro-side?" What are the advantages of a line-item veto?
 - Identify the strengths of the "con-side?" What are the disadvantages and the risks inherent with the line-item veto?
 - In your view, should the president be given the line-item veto? Defend your answer.
 - Given the political climate in Washington today, do you think the current Congress is likely to pass a constitutional amendment granting the President the line-item veto power? Why or why not?
5. **Making Connections: Crafting A Line-item Veto Constitutional Amendment** – Pass out the student handout, *Making Connections: Crafting a Line-item Veto Constitutional Amendment*. As an additional in-class or homework , have students write a proposal for a line-item veto constitutional amendment.
6. **Wrap-Up: Analyzing Political Cartoons**– Project the political cartoons via overhead or PowerPoint, and ask students to analyze each cartoon.
 - a. Describe what's going on in the political cartoon (Who? What? When? Where?)
 - b. Identify any symbols (ex: an elephant to represent the Republican Party) portrayed in the cartoon and analyze what they represent.
 - c. What is the artist's message in the cartoon? What do you think is its purpose?
 - d. Do you agree or disagree with the cartoonist's message? Explain your answer.
 - e. In what ways does this cartoon inform us about the debate over the line-item veto?

Appendix: PowerPoint resources: *The Line-Item Veto*



**" IF I'VE LEARNED ONE THING IN FOUR YEARS,
IT'S TO CHOOSE MY BATTLES WISELY. "**

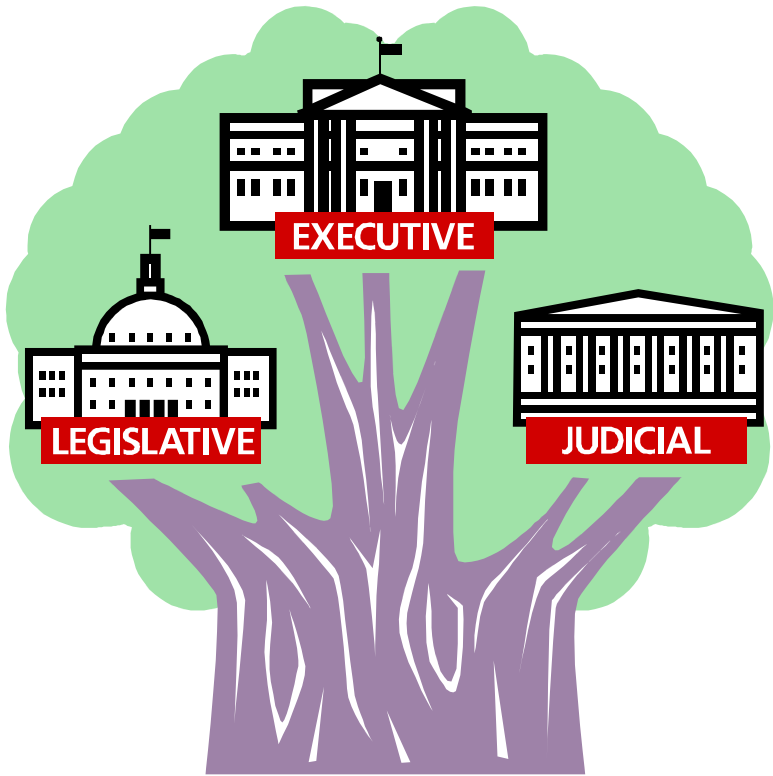
Artist: R.J. Matson Date: July, 2006
Source: <http://politicalhumor.about.com/>

1. Define the term "veto."
2. Identify the symbols portrayed in the cartoon and analyze what they represent. What is the significance of the President's pen?
3. What is the political/historical context of this cartoon?
4. Brainstorm reasons why a president would exercise his/her veto power.
5. If you were the President of the United States, under what circumstances would you use the veto pen?

Separation of Powers

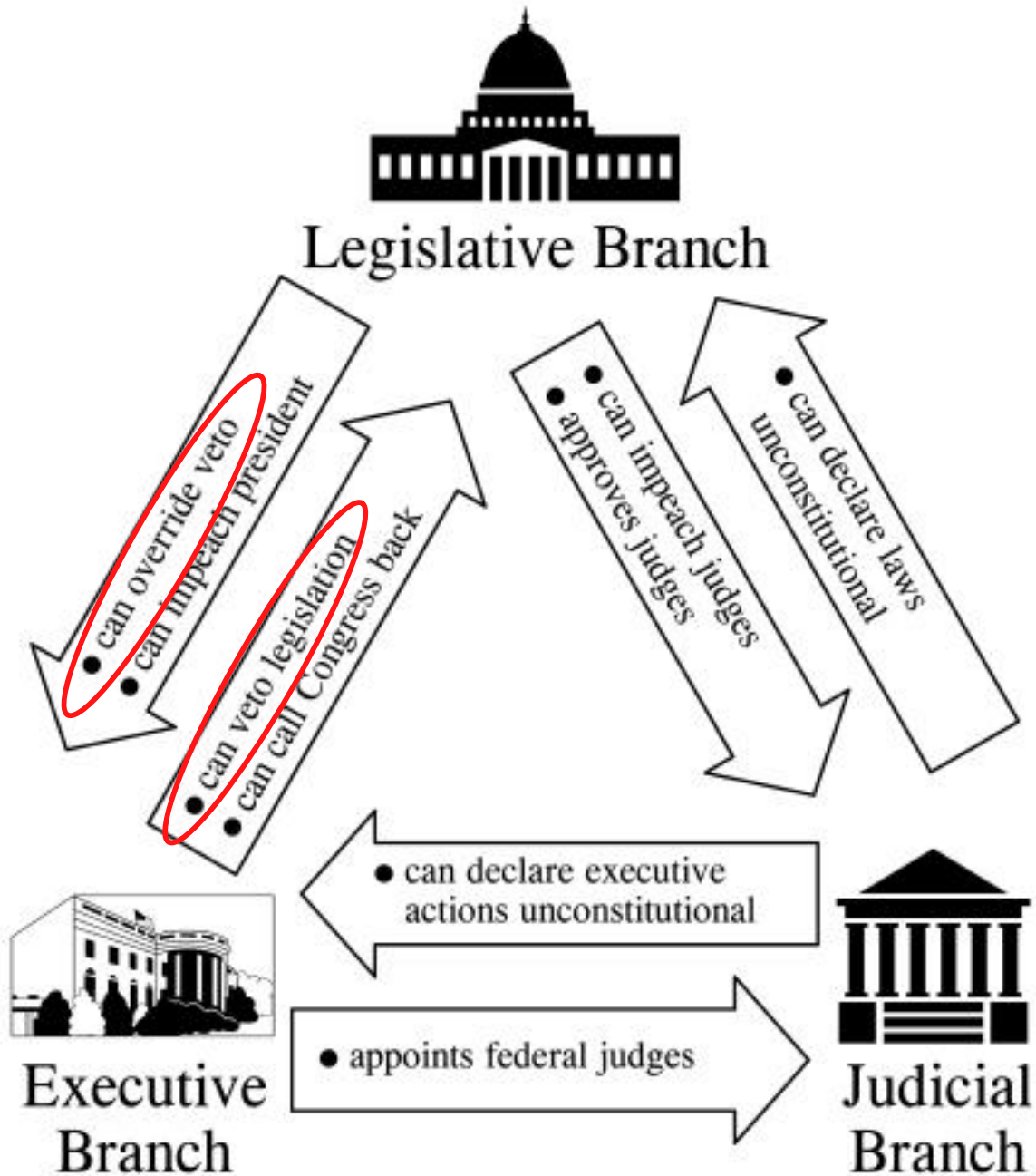
EXECUTIVE BRANCH
PRIMARY FUNCTION?

LEGISLATIVE
BRANCH
PRIMARY
FUNCTION?



JUDICIAL
BRANCH
PRIMARY
FUNCTION?

Checks and Balances





"Presentment Clause"

Article I Section 7: “Every Bill which shall have passed 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 not he shall return it, with his Objections to that House in which it shall have originated. . . . If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law.”

1. In your own words, what does the “presentment clause” mean?
2. Think about the concepts of *separation of powers* and *checks and balances*. How does the “presentment clause” reinforce each concept?
3. Interestingly, the word “veto” does not appear in this clause, nor anywhere in the Constitution. Why do you think the concept of veto is so important?
4. Does the “Presentment Clause” enable a president to veto a particular part of a bill, but approve the rest? Explain your answer.

So....what's a "line-item veto?"

Line-item Veto

- The power of an executive to nullify or "cancel" specific provisions of a bill without vetoing the entire legislative package
- Line-item veto usually applied to budget appropriations
- Line-item veto subject to the possibility of legislative override
- 43 governors currently have the line-item veto power



Line Item Veto Act of 1996

- Passed by Congress and signed into law by President Clinton
- Afforded the President with a line-item veto
- Intended to control *pork barrel spending* that favors a particular region rather than the nation as a whole



Clinton v. New York City (1998)

- U.S. Supreme Court ruled that the line-item veto as granted in the Line Item Veto Act of 1996 violated the “Presentment Clause” of the United States Constitution.
- “The Presentment” in Article I Section 7 outlines how a bill may become law.

Debating the Merits of the Line-item Veto

An Open Forum

Purpose: This activity requires students to research and then debate the pros and cons of a presidential line item veto.

Directions: In 1996, Congress led by a republican majority passed the Line Item Veto Act giving then President Clinton (democrat) the authority to veto portions of appropriations bills. Though the Supreme Court struck down the law in *Clinton v. City of New York* (1998), the merits of an expansion of presidential power to include the line item veto persists; in fact, Congress proposed a similar bill as recently as 2006. Our class will first research and then debate the topic of line item veto. For the purpose of the debate, our class will be divided into two groups, each taking a different stand on the issue:

Team A's Position: *The presidential line item veto does not infringe upon the legislative powers of Congress and is a useful and necessary tool to control government spending.*

Team B's Position: *The presidential line item veto violates the separation of powers between the legislative and executive branches, and gives far too much power to an already dominate Chief Executive.*

Stage 1: Research Stage - Students will prepare arguments for the open forum.

- A. Briefly review the concept of a line-item veto, the Line Item Veto Act of 1996 and the *Clinton v. New York City* Supreme Court decision
- B. Article Analysis - in producing arguments to be used during the open forum, each team member should read and analyze the articles below. Use the *Open Forum: Article Analysis* handout to organize your research.
 - Sabato article: "Item Veto"
 - White House "Fact Sheet: The Line-Item Veto: Constitutional, Effective and Bipartisan"
 - Senator Byrd's "Speeches in Opposition to the Line-Item Veto"
 - Kogan article: "House "Line-Item Veto" Proposal Invites Abuse By Executive Branch"

Stage 2: Open Forum - Each side will be allowed to up to four members on the panel to argue its case.

- I. Opening Statement (each side will have up to 5 minutes)
- II. Rebuttal (3 minutes)
- III. Open Forum (involves entire class)



Stage 3: Forum Debriefing - Students are now asked to step back from their role in the debate and engage in a full class discussion:

- A. What do you see are the strengths of the “pro-side?” What are the advantages of a line-item veto?
- B. Identify the strengths of the “con-side?” What are the disadvantages and the risks inherent with the line-item veto?
- C. In your view, should the president be given the line-item veto? Defend your answer.
- D. Given the political climate in Washington today, do you think the current Congress is likely to pass a constitutional amendment granting the President the line-item veto power? Why or why not?

Open Forum: Article Analysis

Name:

Article Title/Author/ Publication/Date	Author's Bias (ex: conservative? liberal? Supports or opposed to line item veto?)	Points That Support Pro-Line Item Veto Position	Points That Support Con-Line Item Veto Position

Item Veto
by Larry Sabato (2007)

In the war-making arena, presidential power should be down-sized. In the appropriations sphere, presidential power should be expanded. The reason is the same in both cases: It serves the interests of the United States people.

The new Constitution should add the line-item appropriations veto to the arsenal of presidential power. The 'item veto' has been much discussed and thoroughly analyzed over the years- and it actually existed for more than twenty-six months between April 1996 and June 1998. The Supreme Court ruled the congressionally-granted item veto to be unconstitutional after a challenge, but one of the advantages of constitutional revision is that prior Court decisions can be overridden with appropriate language in the new Constitution's text.

Essentially, the line-item veto would permit the President to do what forty-three of the fifty state Governors can already accomplish: cutting specific appropriation "line-items" out of an appropriations bill sent to him by Congress, without vetoing the entire appropriations bill. The latter option is cumbersome, and often impossible because of urgent needs that must be funded immediately. It also risks months of arduous negotiations by both elected branches for an uncertain future.

The addition of an item veto is a significant augmentation of presidential power, though not necessarily in the ways one might think. The type of item veto most prized by executives is called "enhanced rescission." Under this scheme, the President can item-veto any appropriations provision, and item-veto automatically takes effect unless it is overridden by a two-thirds vote of both the U.S. House and the Senate within 30 days. This was the basis of the item-veto legislation that finally passed the Republican-dominated Congress in 1996, after it had been requested by a very President since Franklin D. Roosevelt. With the dramatic expansion of the federal budget during the New Deal, Roosevelt saw the need for an executive 'second look' at many of the appropriations being inserted into the budget by congressmen. In retrospect, FDR's budgets were small compared with the trillion-dollar ones passed today. The issue of waste and unnecessary pork projects loomed larger with each passing decade, until the watershed congressional election of 1994, when the OP took over both houses of Congress for the first time in forty years. As passed, the item veto was not unlimited. In addition to the possibility of congressional override of the veto, the President was not able to reduce funding for a line item, only eliminate it, and he was not permitted to delete any substantive language in the bill. (By contrast, some state governors are permitted to do both. For example, in Wisconsin for a time, governors were actually allowed to remove words or letters from an appropriations act, and in at least one case, Governor Tommy Thompson (R) actually struck the key modifier "not", reversing the meaning of the legislative language!) Additionally, the congressional Line Item Veto Act of 1996 required that all savings from the line-item veto should be applied to the reduction of the national deficit or debt, so that moneys could not be used for more congressional spending or tax reductions.

President Clinton was able to utilize the item veto on seventy-eight occasions in eleven appropriation acts, before the Court struck the veto down. The total saved for the Treasury during the brief time that the item veto was in effect was \$483.6 million. To put his in perspective, the annual national deficit since 2001 has averaged over \$200 billion, and the total national debt now exceeds \$8 trillion.

However, it is important to acknowledge that there would be considerable advantages gained for the country by means of line-item veto-advantages that, considered together, would make the veto worthwhile addition to the new Constitution. First, as we have already noted, some pork projects would be eliminated and some money, however modest, would be saved. Actually, only in the United States could a half a billion dollars be considered "modest." Perhaps another president might line item veto far more than the amount targeted by President Clinton between 1996 and 1998, and all of it would go toward paying down the national debt. If the discussion about the skyrocketing debt in Chapter I has left any impression, it is that we ought to encourage any effort, small or large, to reduce the burden on future generations.

Second, the very fact that a Republican Congress passed the Line Item Veto Act for the use of a Democratic President is an open admission that the legislature will probably never be able to curb its appetite for more spending and unnecessary local pork. The Congress basically said, 'Only a President can exert the discipline to control expenditures.' It is possible that a permanent item-veto would actually remove what little spending self-restrains exists in Congress by promoting the attitude that 'the President will save us from ourselves,' yet looking back at the



enormous deficits in most years and the massive amounts of pork served up by Congresses over the past four decades, it is difficult to argue credibly that there is much legislative restraint to lose.

Third, the Presidency gains in other useful, productive ways from an item-veto. The Sword of Damocles can be a welcome inducement for members of Congress, both from the opposition party and the President's Own party, to cooperate and negotiate with the Executive branch on specific provisions of the appropriations bills. Indeed, President Clinton used the item-veto not just to eliminate waste but also to enhance his programmatic objectives overall. The analysis of Clinton's vetoes did not reveal a pattern of partisan motivation, by the way, though this new power would be an especially vital tool for any President facing a Congress controlled by the other party. If we want an effective Presidency, we must structure it to be effective when, or especially in difficult situations such as split party control of the White House and the legislature. A President's power to reward or punish members of Congress in the appropriations process can be subject to abuse, but so is any presidential authority. Most vetoed local projects, even if they are cut for the wrong reasons by a President, will not adversely affect the national interest. Yet constituency based pork is so highly prized by legislators that, in order to get it, they might be willing to give the Executive their favorable vote on a bill that truly serves the national interest. Pork spending generates jobs and benefits for the lucky states and localities that receive it, but most of all, it produces votes at election time for members of Congress. They will give up a great deal to keep some of their projects in the budget.

When the Supreme Court declared the Line Item Veto Act unconstitutional in *Clinton v. City of New York*, the Justices found that the act violated the 'presentment clause' of Article I, Section 7, of the Constitution. According to that provision of the Constitution, after both houses of Congress pass a bill "(it shall, before it become 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, with his objections to that House in which it shall have originated." The Court ruled that the language of the Constitution only gives the President two options: to sign a bill or return it. Since the Line Item Veto Act allowed the President to change the bill and *then* sign it, it violated that procedure and was therefore unconstitutional. Some senior members of Congress, such as West Virginia Senator Robert Byrd, joined in the effort to strike down the bill in Court, believing that it infringed upon congressional prerogatives. The Court did not insist that all versions of the item veto would automatically be unconstitutional, but clearly this would be a treacherous subject for another Congress to tackle. The far easier route is the adoption of an item-veto clause in a new Constitution. The President would gain some powerful leverage at the federal level, but the real beneficiary would be us- the American public. Unneeded pork would be slaughtered, and over time, the national debt would be reduced.

Source: Sabato, Larry. [A More Perfect Constitution](#). Walker & Company: New York, 2007.



Fact Sheet: The Legislative Line-Item Veto: Constitutional, Effective, and Bipartisan

Today, President Bush Called On The Senate To Join The House And Quickly Pass The Line-Item Veto, So He Can Sign It Into Law. The line-item veto, already passed by the House, would allow Presidents to target pork in large spending bills. It is an essential part of the President's strategy to reform the budget process and enhance fiscal discipline. The line-item veto President Bush has submitted to Congress is constitutional, effective, and has bipartisan support.

- **A Line-Item Veto Is A Vital Tool A President Could Use To Target Unnecessary And Wasteful Spending.** Tacking on spending to large bills is called "earmarking," and it often results in wasteful or unnecessary spending. Earmarks are frequently inserted into bills at the last minute, leaving little or no time to debate or amend them. Earmark sponsors often are not required to provide their colleagues with a reasoned justification for the proposed spending.
 - **The Earmark Problem Is Getting Worse.** According to the Congressional Research Service, the number of earmarks increased from about 3,000 to 13,000 over the last decade.
- Americans Have A Right To Know That When They Send Their Hard-Earned Dollars To Our Nation's Capital, Those Dollars Will Be Used For Something That Is Necessary And Worthwhile.** The American people know how earmarks can lead to wasteful spending, and they are aware that their money is sometimes spent on unnecessary projects.
- By Coming Together On The Line-Item Veto, Democrats And Republicans Can:**
- Inject some common sense into the budget process;
 - Change the perverse incentives that encourage wasteful spending; and
 - Show the American people that being wise with the taxpayers' money transcends party labels.

President Bush's Line-Item Veto Legislation Is Constitutional

President Bush's Line-Item Veto Legislation Meets Constitutional Requirements. The Supreme Court struck down the 1996 version of the line-item veto because the Court concluded that it unconstitutionally permitted the President to unilaterally change a law passed by the Congress. Under President Bush's proposal, when the President determines that an earmark or spending provision is wasteful or unnecessary, he can send it back to Congress, and Congress is then required to hold a prompt up-or-down vote on whether to retain the targeted spending.

President Bush's Line-Item Veto Legislation Will Help Restrain Government Spending

The Line-Item Veto Will Address The Central Dilemma Created By Unwarranted Earmarks. When Members of Congress are faced with an important bill that includes wasteful spending tacked on by their colleagues, they have two bad options. Either they vote against the whole bill, including all the worthwhile spending, or they vote for the whole bill, including the wasteful spending. When such a bill comes to the President, he is left with the same bad choice – either he vetoes the whole thing, or he signs it with all the wasteful spending intact.

A Line-Item Veto Offers A Smarter Way To Handle Taxpayer Dollars. With a line-item veto, the President could approve the spending that is necessary, redline the spending that is not, and send the wasteful spending back to the Congress for an up-or-down vote.

By Passing Line-Item Veto Legislation, Congress Would Make Lawmakers Think Twice Before Trying To Sneak A Wasteful Project Into A Bill. When legislators know that their projects may be held up for closer public scrutiny, it discourages them from proposing this spending in the first place.

President Bush's Line-Item Veto Legislation Has Bipartisan Support

At The State Level, 43 Governors Already Have A Line-Item Veto, And They Are Almost Evenly Divided Between Democrats And Republicans. Governors from both parties use their line-item authority to restrain wasteful spending in their state budgets.



The Line-Item Veto Also Has Bipartisan Support In Congress. Thirty-five Democrats joined more than 200 Republicans in the House to pass the line-item veto last week. The Line-Item Veto now pending in the Senate also has bipartisan support, with Senator John Kerry as a cosponsor of the legislation. By coming together to pass this important reform, Congress will bring discipline to the budget process.

Source: Office of the Press Secretary June, 2006 <http://www.whitehouse.gov/news/releases/2006/06/20060627-2.html>



Senator Robert Byrd's Speeches in Opposition to the Line Item Veto

In 1993 Senator Robert Byrd (D-West Virginia made a series of fourteen speeches in opposition to the Line-Item Veto Bill designed to give the President greater authority on matters having to do with the national budget. Byrd was not successful in preventing the bill from being passed, but the following are excerpts from three of his speeches giving his reasons for opposing the bill.

From May 5, 1993-The following is an excerpt from Mr. Byrd's first of fourteen speeches about the Line-Item Veto.

"In search of antidotes for this fast-spreading fiscal melanoma of suffocating deficits and debt, the budget medicine men have once again begun their annual pilgrimage to the shrine of Saint Line -Item Veto , to worship at the altar of fool's gold, quack remedies, such as enhanced rescission, line -item veto , and other graven images, which, if adopted, would give rise to unwarranted expectations and possibly raise serious constitutional questions involving separation of powers, checks and balances, and control of the national purse.

"Mr. President, as I have attempted to evaluate and analyze some of these questions, and particularly the one that I am discussing--that of separation of powers, checks and balances, line -item veto, enhanced rescissions, expedited rescission, and so on and so on--I have wondered if we Senators really think much about our oath of office. We take the oath. I wonder if, during the following 6 years, we give any further thought to that oath, to its meaning and to the responsibilities and duties that devolve upon us by virtue of our having sworn to that oath in the presence of our colleagues and with our hand on the Bible and with the closing words, 'So help me God.'

"I am made to wonder, as I have sat here year after year these last few years, and have witnessed the attacks made upon Congress and upon the legislative process and upon the appropriations process and upon the Constitution, its checks and balances and separation of powers, I have wondered how much we Senators really think about the oath that we took when we were sworn into office. It is easy to judge others and it is easy to be wrong in one's judgment of others. But I am constrained to wonder how much we really stop and reflect on that solemn oath that we take to support and defend the Constitution of the United States against all enemies, foreign and domestic."

The following speech was the final speech Mr. Byrd gave on the topic on October 18, 1993.

"Just as carefully, they set in place a system of checks and balances and separation of powers, and lodged the control of the purse in the 'people's branch' to prevent the rise of a new coinage of imperial executives in the federation that they created. "We, too, have reached a stage where we seem to remain in a state of crisis, semicrisis, or pseudocrisis. The American people have grown impatient and are demanding solutions to serious problems--problems that do not lend themselves to easy and quick solutions. The solutions to these problems will be painful and will take time, perhaps years, to succeed. "This is not a truth that some people want to hear. Many would rather believe that quack remedies such as line -item vetoes and enhanced rescissions powers in the hands of Presidents will somehow miraculously solve our current fiscal situation and eliminate our monstrous budget deficits.

"Of course, some people would, perhaps, prefer to abolish the Congress altogether and institute one-man government from now on. Some people have no patience with constitutions, for that matter.

"But the survival of the American constitutional system, the foundation upon which the superstructure of the Republic rests, finds its firmest support in the continued preservation of the delicate mechanism of checks and balances, separation of powers, and the control of the purse, solemnly instituted by the Founding Fathers. For over 200 years, from the beginning of the Republic to this very hour, it has survived in unbroken continuity. We received it from our fathers. Let us as surely hand it on to our sons and daughters."

This statement was issued by Senator Byrd after the Line-Item Veto was ruled unconstitutional.

"All Americans should breathe a sigh of relief that U.S. Supreme Court, in its recent ruling, has found the Line Item Veto Act unconstitutional, because the Court, in so finding, has spared an American birthright for yet awhile longer.



"When the Framers of the Constitution met in Philadelphia in 1787, they painstakingly crafted one of the simplest, yet most enduring documents ever printed -- its central notion being that the power of the United States government ultimately rests in the hands of its citizens. Thanks to their familiarity with history and philosophy, the Framers knew that power concentrated in the hands of one individual or one branch of government poses a direct threat to personal liberty. Accordingly, they devised a complex system of divided powers in the expectation that future generations would understand and respect the intimate link between the organization of government and the protection of their own liberties.

"Essential to that system of divided powers, the Framers realized, was the vesting in Congress -- the people's branch -- of the power over the purse. That power, they recognized, would provide the Congress, and through it the people, with an important check on the executive and judicial branches of government.

"I believe that Justice Kennedy put it well when, in concurring with the majority opinion of the Court, he wrote, 'By increasing the power of the President beyond what the Framers envisioned, the [line item veto] statute compromises the liberty of our citizens, liberty which the separation of powers seeks to secure.' His words echo those of 18th century philosopher Montesquieu, who wrote, 'When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty....'

"The Framers took seriously the tyrannical threat posed by vesting too much power in one man or one body, and they took pains to guard against that threat.

"Our Constitution embodies their vision, their dream of freedom, supported by the genius of practical structure which has come to be known as the checks and balances and separation of powers. If the fragile wings of that structure are ever impaired, then the dream can never again soar as high.

"For me, a long, difficult journey is happily ended. The wisdom of the Framers has once again prevailed, and the slow undoing of the people's liberties has been halted, at least for now. "

Source: http://www.congresslink.org/print_lp_lineitem.htm



House “Line-item Veto: Proposal Invites Abuse by Executive Branch
by Richard Kogan
June, 2006

The House Budget Committee has approved the Legislative Line Item Veto Act of 2006, a variation of a proposal that the Bush Administration submitted earlier this year.[1] The House floor is expected to consider this legislation during the week of June 18, while the Senate Budget Committee is scheduled to consider a different version of the proposal (along with other changes to the budget process) starting June 20.

The House proposal would allow the President to sign appropriations acts and tax and entitlement legislation, and then propose canceling (or “vetoing”) specific provisions of those measures. He would be allowed to propose canceling far more than “earmarks.” For example, the President could, if he chose, leave all earmarks in place while canceling all funding for the 91 programs he proposed to eliminate in his February 2006 budget.

When the President chose to strike amounts from appropriations acts, he could withhold the funds in question for up to 90 days. During that time, Congress would be required to vote on whether to pass legislation canceling the funding as the President had requested, and amendments to the legislation would be barred. If Congress turned down the President’s request to cancel the funds, *the President could continue to withhold them* for several months after Congress had voted to reject his request to eliminate the funding. Under certain circumstances, some of the funds could expire — even though Congress had rejected the vetoes — if the 90-day withholding period extended beyond the end of the fiscal year for which the funds had been appropriated.

The President also could use the new “line-item veto” procedure to strike provisions of new entitlement legislation and, in theory, certain new “targeted tax benefits” contained in recently enacted tax bills. In fact, this authority would apply in any meaningful way only to entitlement expansions. Any tax cut or tax break benefiting *as few as two individuals or entities* (such as two large corporations) would be entirely exempt; the President would be prohibited from proposing to cancel it. Thus, entitlement improvements benefiting millions of low-income children or elderly people could be vetoed, while new tax loopholes benefiting as few as two wealthy investors or large corporations would be immune.

Moreover, under the legislation, even special-interest tax breaks benefiting a *single* individual or corporation could be shielded from the line-item veto authority by the chairmen of the House Ways and Means and Senate Finance Committees. The legislation gives them the authority to exempt even tax breaks affecting only a single taxpayer or firm.

How Would the New House Proposal Differ From the President’s Existing Authority to Propose Rescissions?

On balance, the new proposal would significantly expand the President’s authority. Currently, the President can request that Congress rescind (or cancel) enacted appropriations, and he can temporarily withhold the money in question while Congress considers the rescission request. The new procedure would differ from the rescission procedure currently in law in a number of important ways:

- The new procedure would give the President a “fast track” to force an up-or-down congressional vote on his package of cancellations in its entirety. The package of cancellations could not be divided into separate parts, amended, or filibustered. The vote would occur within nine days of the package’s introduction in Congress as a piece of legislation, and within 14 legislative days of the President’s submitting the package. (The package would have to be introduced in Congress within five days after the President submitted it.)

The President could package his proposed cancellations in a number of ways. He could split his proposed cancellations of items from a single piece of legislation into as many as five different veto packages —



and as many as ten different packages in the case of an omnibus reconciliation bill or an appropriations

bill that contains items from at least two subcommittees — thereby compelling Congress to take dozens of individual votes. Congress would have to cast an up-or-down vote on each package of cancellations exactly as the President had constructed it. In sharp contrast, the existing rescission procedure allows Congress to package the President's rescission requests in ways that are most convenient for congressional consideration, amend the President's rescission requests, or decline to vote on them.

The new procedures would allow the President to withhold funding for up to 90 days after he proposed a package of cancellations, *even if Congress voted quickly to reject the terminations*. Existing rescission procedures, in contrast, allow a withholding period of 45 days of "continuous session." Even with Congressional recesses, the existing withholding period under the current procedures is generally well short of 90 days. If the President submitted a package of cancellations in July of a year (e.g., with respect to a supplemental appropriations bill enacted in May or June) he might be able to kill various items simply by withholding funding until the end of the fiscal year on September 30, even if Congress acted swiftly to reject his proposed cancellations. This lengthy period of withholding clearly is not necessary, since the fast-track mechanism in the bill would require a vote in Congress within 14 legislative days of Congress' receiving the President's package of proposed cancellations. The American Law Division of the Congressional Research Service believes it would be constitutional for the proposal to have required that funds be released upon Congress's completion of its fast-track consideration.

Another difference between the proposed procedure and the President's current rescission authority is that under the new procedure, the President could propose the elimination of appropriations for discretionary programs but not a reduction in funding for such programs. Perhaps because the new procedure contemplates the cancellation of entire items, programs, budget accounts, or provisions, the new proposal requires the President to submit his cancellation packages within 45 days of enactment of budget legislation. There is no time limit under the existing procedures. But the existing procedures were designed to accommodate cases in which funds provided at the start of a fiscal year proved to be more than needed much later in the year, as projects were being completed; there are some occasions in which projects come in under budget or circumstances change part-way through the year, allowing an appropriation to be reduced. The new proposal is not designed to deal with the belated discovery of cost reductions, but rather with up-front presidential determinations that entire programs or projects are undesirable.

Another significant point is that under the new procedure, if Congress enacted a package of cancellations the President had submitted, the Budget Committee chairmen would reduce accordingly the amount allocated to the Appropriations Committees for the fiscal year in question. The effect would be to dedicate all savings from the cancellations to deficit reduction. This inflexible approach could prove self-defeating. A legitimate purpose of eliminating certain unworthy projects may be to direct scarce funds to higher priority programs or urgent needs that have suddenly arisen; that would not be permitted under the new procedure. Without the opportunity to redirect at least a portion of the savings to better uses, Congress is likely to be less willing to approve the President's package of cancellations in the first place.

The new procedure could be applied not only to appropriations for discretionary programs but also to new entitlement legislation contained in recently enacted bills. Within 45 days of its enactment, the President could propose to cancel any increase in benefits or eligibility in a provision of an entitlement bill.

The story is very different with regard to "targeted tax benefits," which the President could likewise propose to cancel, but only on an extremely limited basis. Targeted tax benefits would be defined as being limited to those measures that provide a tax break to *a single beneficiary*. (The Administration's line-item veto bill and the 1996 Line-Item Veto law each set the threshold at 100 beneficiaries, rather than one beneficiary.) A beneficiary could be a business, a partnership, a trust, a non-profit group, or a single taxpayer. Thus, a tax break that applies only to people with income of more than, say, \$900 million per year would *not* be considered a targeted tax benefit, because there likely would be more than one individual who makes



more than that. Similarly, a special-interest provision designed to provide a tax loophole that would benefit only Exxon-Mobil and Amoco would not be considered a “targeted tax benefit,” because two different oil companies would benefit.

Moreover, the bill would allow the Chairmen of the House Ways and Means Committee and the Senate Finance Committee to list, for each tax bill, which provisions — if any — should be considered a targeted tax benefit. They could, without challenge, take an even more restrictive view than the extraordinarily narrow definition already contained in the proposal.

How Does This Proposal Differ From the Line Item Veto Act of 1996?

Unlike the Budget Committee’s proposal, the Line Item Veto Act of 1996 granted the President the unilateral authority to cancel enacted appropriations. The Supreme Court ruled in 1998 that such authority was unconstitutional, since it allowed the President to change a law by himself, thus violating the constitutional rules for creating or amending laws. The new proposal is presumed to be constitutional because it does not grant the President the authority to change an appropriations act unilaterally; rather, he would request that Congress enact a change in the appropriations law.

There are three ways in which the new proposal could grant the President *more* power than under the 1996 act. That act gave the President five days from the enactment of appropriations, entitlement, or tax legislation to decide whether to cancel some of its provisions, while the Budget Committee proposal gives the President 45 days (and longer if Congress has adjourned *sine die*).

In addition, the 1996 act effectively limited the President to one package of vetoes per appropriations bill, entitlement bill, or tax bill. This limit was a natural consequence of having only five days to decide which provisions to veto. The Budget Committee proposal, in contrast, explicitly allows five (or in some cases 10) different packages of cancellations for each piece of budgetary legislation.

Finally, under the 1996 act, if Congress overturned a presidential rescission by statute, the withheld funds would have to be released; under the Budget Committee proposal, if Congress overturns a presidential veto by defeating the President’s proposal to cancel the funds, the President can continue to withhold the funds for up to 90 days — long enough, in some cases, to effectively cancel the funds.

The proposal would thus establish sharply unequal treatment of entitlement increases and tax breaks. The President could use the proposed fast-track procedure to force a vote on the cancellation of an entitlement improvement that would benefit millions of people, but *not* be able to force a vote on a special-interest tax break if it benefited as few as two people. This is despite the finding by Congress’s Joint Committee on Taxation, the Government Accountability Office, and former Federal Reserve Chairman Alan Greenspan that hundreds of billions of dollars a year of tax breaks contained in the tax code are analogous to entitlement programs and are properly thought of as “tax expenditures” or “tax entitlements.”

Would The Proposal Reduce The Deficit?

The Congressional Budget Office has suggested that the consequences of line-item veto proposals such as this one might be to *increase* total spending rather than reduce it, because “Congress might accommodate some of the President’s priorities in exchange for a pledge not to propose rescission of certain provisions, thereby increasing total spending.” CBO says that studies of states with line-item vetoes have “documented similar devices employed by state legislatures.”

The columnist George Will makes the same point:

Arming presidents with a line-item veto might *increase* federal spending, for two reasons. First, Josh Bolten, director of the Office of Management and Budget, may be exactly wrong when he says the veto would be a “deterrent” because legislators would be reluctant to sponsor spending that was then singled out for a veto. It is at



least as likely that, knowing the president can veto line items, legislators might feel even freer to pack them into legislation, thereby earning constituents' gratitude for at least trying to deliver. Second, presidents would buy legislators' support on other large matters in exchange for not vetoing the legislators' favorite small items.

Congressional Research Service senior specialist Louis Fisher also came to the conclusion that presidents would more likely use line-item veto authority to pressure lawmakers to support White House spending policies by threatening to cut Members' pet projects, than to reduce total spending or the deficit. In a 2005 report, Fisher warned that "experience with the item veto, both conceptually and in actual practice, suggests that the amounts that might be saved by a presidential item veto could be relatively small, in the range of perhaps one to two billion dollars a year. Under some circumstances, the availability of an item veto could increase spending. The Administration might agree to withhold the use of an item veto for a particular program if Members of Congress agreed to support a spending program initiated by the President. Aside from modest savings, the impact of an item veto may well be felt in preferring the President's spending priorities over those enacted by Congress."

Finally, Douglas Holtz-Eakin, director of the Congressional Budget Office from February 2003 to December 2005 and now a fellow at the Council on Foreign Relations, recently observed that, "I don't think there's any evidence that this, in itself, is a powerful enough weapon to alter the path of spending." Holtz-Eakin noted that in studying the effect of line-item vetoes at the state level, he found they produced mixed results. He found no major differences in spending between states where governors had this power and states where they did not. Similarly, in his recent testimony on this proposal, the current acting CBO director noted that in the absence of a political consensus to establish fiscal discipline, "the proposed changes to the rescission process included in H.R. 4890 [the Administration's version of this proposal] are unlikely to greatly affect the budget's bottom line."

Would the Proposal Improve the Quality of Legislation and the Political Process?

Mr. Will's second point, cited above, is not just about the size of the federal budget but also about the political power of the President. The current division of powers gives the President the power to veto legislation, but balances this presidential power by giving Congress the power to package legislation. The new proposal would further weaken Congress in relation to the President by enabling the President to propose cancellations that could divide the congressional coalition that had negotiated the legislation in the first place. Mr. Will concludes that "The line-item veto's primary effect might be political, and inimical to a core conservative value. It would aggravate an imbalance in our constitutional system that has been growing for seven decades: the expansion of executive power at the expense of the legislature."

As Will makes clear, the proposal would enhance the President's ability to engage in political "horse-trading" with members of Congress. The President also would gain enhanced ability to engage in political horse-trading with outside groups. Whether dealing with legislators or outside groups, the President could threaten to propose the cancellation of their favored items — or pledge *not* to cancel their favored items — in return for their support on other, unrelated matters. The President's threat to cancel, or promise not to cancel, items of importance to legislators or to outside groups could be used to increase his leverage to advance policies unrelated to the budget, such as support for his nominees, for regulatory legislation, or even for foreign treaties.

These effects were recently discussed by a former staff director of the House Appropriations Committee, who testified —

There is no question that a nexus has developed between campaign fund-raising and the community that advocates on behalf of earmarks. The more earmarks a Senator or Congressman is able to win for a local university, hospital, city government or art museum, the more lobbyists he may expect to find in attendance at his fund-raisers. ... Earmarks are increasingly used to persuade members to support legislation that they might otherwise oppose or oppose legislation that they might support. In the House this practice is now being extended to the granting of earmarks in one piece of legislation in return for a member's vote on unrelated legislation. Chairman Thomas joked openly about the delay in consideration of the highway bill last summer so that the leadership could gain more support for the Central America Free Trade Agreement.



Some would maintain that the Budget Committee's proposal is intended to be a partial cure for these diseases. But it could just as easily aggravate the diseases by giving the President an easier and more direct way to play the

game. The premise of the proposal seems to be that the President will be *less* political, *less* interested in rounding up votes for policy issues, nominations, and other proposals, and *less* interested than Members of Congress in securing the financial and political support of outside groups for such purposes. Would that really be the case? Norman Ornstein, of the American Enterprise Institute, thinks not.

[T]he Republicans have rejected the one device that has been proved in the past to bring fiscal discipline, the pay-as-you-go provisions that governed fiscal policy through the golden years in the 1990s. Instead, they are pushing a sham version of the line-item veto, basically just a sharply enhanced rescission authority for the president.

Congress would pass its spending bills, the president would pluck out items he did not like and send them back to Congress to vote on them again.

Leave aside the simple abdication of responsibility by Congress here — the refusal to set up a provision to have separate votes on earmarks or related items before any bill gets to the president, and the basic message of “stop us before we spend again.” The larger reality is that this gives the president a great additional mischief-making capability, to pluck out items to punish lawmakers he doesn't like, or to threaten individual lawmakers to get votes on other things, without having any noticeable impact on budget growth or restraint.

Source: <http://www.cbpp.org/6-19-06bud2.htm>



Making Connections

Crafting A Line-item Veto Constitutional Amendment

Directions: As a culminating activity that can either occur during class in small groups or as a homework assignment, complete the following task:

You are a member of Congress. Write a proposal for a constitutional amendment giving the president a line-item veto. [Note: You may want to include provisions in the amendment that provide safeguards against some of the problems we addressed in class.]

Amendment Title:

Amendment Text:

POLITICALLY CORRECT

By Jim Huber



August, 1997

Source:

<http://www.conservativecartoons.com/>

6. Describe what's going on in the political cartoon (Who? What? When? Where?)
7. Identify any symbols (ex: an elephant to represent the Republican Party) portrayed in the cartoon and analyze what they represent.
8. What is the artist's message in the cartoon? What do you think is its purpose?
9. Do you agree or disagree with the cartoonist's message? Explain your answer.

10. In what ways does this cartoon inform us about the debate over the line-item veto?



"I'M ASKING CONGRESS FOR THE NEW LINE-ITEM VETO POWER— ASSUMING I DON'T HAVE IT ALREADY!"

Artist: R.J. Matson, *New York Observer & Roll Call*

Date: 3/8/06

Source: <http://www.cagle.com>

1. Describe what's going on in the political cartoon (Who? What? When? Where?)
2. Identify any symbols (ex: an elephant to represent the Republican Party) portrayed in the cartoon and analyze what they represent.
3. What is the artist's message in the cartoon? What do you think is its purpose?



4. Do you agree or disagree with the cartoonist's message? Explain your answer.
5. In what ways does this cartoon inform us about the debate over the line-item veto?