THE LINE ITEM VETO

HEARING

BEFORE THE

SUBCOMMITTEE ON LEGISLATIVE AND BUDGET PROCESS

OF THE

COMMITTEE ON RULES
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTH CONGRESS

SECOND SESSION

ON

THE LINE ITEM VETO AFTER ONE YEAR: THE PROCESS AND ITS IMPLEMENTATION

MARCH 11 AND 12, 1998

Printed for the use of the Committee on Rules

U.S. GOVERNMENT PRINTING OFFICE
48-550CC WASHINGTON : 1998

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-057030-1

COMMITTEE ON RULES

GERALD B.H. SOLOMON, New York, *Chairman*

DAVID DREIER, California
PORTER GOSS, Florida
JOHN LINDER, Georgia
DEBORAH PRYCE, Ohio
LINCOLN DIAZ-BALART, Florida
SCOTT McINNIS, Colorado
DOC HASTINGS, Washington
SUE MYRICK, North Carolina

JOHN JOSEPH MOAKLEY, Massachusetts
MARTIN FROST, Texas
TONY P. HALL, Ohio
LOUISE M. SLAUGHTER, New York

WILLIAM D. CROSBY, *Chief Counsel*
DANIEL J. KENIRY, *Staff Director*
GEORGE C. CRAWFORD, *Minority Staff Director*
BRYAN H. ROTH, *Office and Systems Manager*

SUBCOMMITTEE ON LEGISLATIVE AND BUDGET PROCESS

PORTER GOSS, Florida, *Chairman*

JOHN LINDER, Georgia
DEBORAH PRYCE, Ohio
DOC HASTINGS, Washington
GERALD B.H. SOLOMON, New York

MARTIN FROST, Texas
JOHN JOSEPH MOAKLEY, Massachusetts

WENDY SELIG, *Counsel*
KRISTI WALSETH, *Minority Staff Director*

SUBCOMMITTEE ON RULES AND ORGANIZATION OF THE HOUSE

DAVID DREIER, California, *Chairman*

LINCOLN DIAZ-BALART, Florida
SCOTT McINNIS, Colorado
SUE MYRICK, North Carolina
GERALD B.H. SOLOMON, New York

TONY P. HALL, Ohio
LOUISE M. SLAUGHTER, New York

VINCENT RANDAZZO, *Counsel*
MICHAEL GESSEL, *Minority Staff Director*

CONTENTS

Page

MARCH 11, 1998

Opening statement of Hon. Porter J. Goss, chairman of the Subcommittee on Legislative and Budget Process (prepared statement p.04) 01
Opening statement of Hon. Gerald B.H. Solomon, chairman of the Committee on Rules 11
Opening statement of Hon. Martin Frost, a member of the Committee on Rules (prepared statement p.09) 11
Statement of:
O'Neill, June E., Director, Congressional Budget Office (prepared statement p.15) 12
Clinger, Hon. William, a former Representative in Congress from the State of Pennsylvania 33
Joyce, Philip G., Assistant Professor, Department of Public Administration, Maxwell School of Citizenship and Public Affairs, Syracuse University (prepared statement p.42) 38
Berthoud, John, President, National Taxpayers Union (prepared statement p.56) 52
Moore, Stephen, Director, Fiscal Policy, CATO Institute, (prepared statement p.64) 62
Schatz, Tom, President, Citizens Against Government Waste (prepared statement p.119) 74
Additional material submitted for the record:
Letter from OMB Director Franklin Raines, submitted by Chairman Goss 08
1998 Congressional Pig Book Summary, submitted by Tom Schatz 75

MARCH 12, 1998

Opening Statement of Hon. Porter J. Goss, chairman of the Subcommittee on Legislative and Budget Process 133
Statement of:
Solomon, Hon. Gerald B.H., a Representative in Congress from the State of New York (prepared statement p.160) 134
Murtha, Hon. John P., a Representative in Congress from the State of Pennsylvania (prepared statement p.167) 163
Spratt, Hon. John M., Jr., a Representative in Congress from the State of South Carolina (prepared statement p.186) 181
Miller, Hon. Dan a Representative in Congress from the State of Florida (prepared statement p.192) 190
Stenholm, Hon. Charles W., a Representative in Congress from the State of Texas (prepared statement p.197) 194
Neumann, Hon. Mark W., a Representative in Congress from the State of Wisconsin (prepared statement p.210) 208
Roemer, Hon. Tim, a Representative in Congress from the State of Indiana (prepared statement p.216) 214
Upton, Hon. Fred, a Representative in Congress from the State of Michigan (prepared statement p.218) 217
Castle, Hon. Michael N., a Representative in Congress from the State of Delaware (prepared statement p.223) 221
Packard, Hon. Ron, a Representative in Congress from the State of California (prepared statement p.230) 228
Skaggs, Hon. David, a Representative in Congress from the State of Colorado 232

Page

Additional material submitted for the record:
Rules Committee Staff Analysis, submitted by Gerald B.H. Solomon 137
Statement of, Hon. Christopher John, a Representative in Congress from the State of Louisiana 237
Questions to CBO and CBO's responses, submitted by Porter J. Goss 240

THE LINE ITEM VETO AFTER ONE YEAR, THE PROCESS AND ITS IMPLEMENTATION

Wednesday, March 11, 1998

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON LEGISLATIVE AND BUDGET PROCESS,
COMMITTEE ON RULES,
Washington, D.C.

The subcommittee met, pursuant to call, at 9:30 a.m. in Room H–313, The Capitol, Hon. Porter J. Goss [chairman of the subcommittee] presiding.

Present: Representatives Goss, Solomon, Hastings and Frost.

Also Present: Representative Dreier.

Mr. GOSS. Good morning, ladies and gentlemen. Welcome to a hearing of the Subcommittee on Legislative and Budget Process to review the line item veto after 1 year to determine how its process implementation has fared.

We are very pleased today to welcome a distinguished group of witnesses. We will be starting with Dr. June O'Neill, Director of CBO, as we all know; followed by Mr. William Clinger; to be followed by Dr. Phil Joyce of Syracuse University; to be followed by a panel. We propose to accomplish all of this this morning, so we will be moving swiftly.

STATEMENT OF HON. PORTER J. GOSS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. GOSS. I am going to make an opening comment because I believe the subject justifies it. And I would like to set a little bit of the tone.

The subcommittee is today beginning 2 days of oversight hearings on the implementation of the Line Item Veto Act. As Chairman Solomon kindly announced last evening, we will be doing this again on Thursday. As Members know, the President signed the Line Item Veto Act into law on April 9, 1996, in an historic ceremony that several of us were privileged to attend. The new authority for the President carefully delegated to him with specific guidelines and limits by the Congress took effect on January 1, 1997.

Since that time the President has exercised this new budget tool on 82 separate provisions of 11 different laws for a net budget savings of $798.6 million, by our count. Perhaps that is not going to be the same by everybody's count. Members have a summary in their packets of the actions taken by the President under the Line Item Veto Act, and some of the testimony addresses the specifics as well.

Many Members of Congress and several members of our Rules Committee, including our distinguished Chairman, had worked for years to see the line item veto become a reality. I am proud to have been part of that process and pleased that we are now able to spend some time in this subcommittee reviewing the first year of the new law's implementation.

Certainly the line item veto has been controversial. Just the fact that it took Congress more than 1 year to reconcile the differences in the House- and Senate-passed versions of the law in the 104th Congress suggested that fact. But the fact that also this budget tool has carried with it so much controversy also suggests that it has been carefully considered by many people along the way.

I have been somewhat puzzled in recent weeks that some news stories about the Line Item Veto Act in context of decisions made by President Clinton have suggested that Congress rushed into ill-advised passage of the law. Having sat through that year-long conference committee process, and recognizing that my 9-year tenure in this House seems short in comparison to the time that has been spent by advocates of the line item veto making it a reality, I am quite comfortable in saying that this law was not rushed into existence.

I understand that my comfort level will not satisfy those who believe that the new law is unconstitutional and who, therefore, conclude that Congress should not have passed it and the President should not have signed it. For the outcome of that debate, we await the ruling of the Supreme Court, which is now expected to act prior to July of this year.

Putting aside the question of constitutionality, a question which is not within the jurisdiction of this subcommittee to consider, I must say that I, like many of my colleagues, have disagreed strongly with some of the decisions that this President has made in exercising the line item veto over this past year. Many proponents of the line item veto are troubled that the President has been too timid or too arbitrary in his application of the new law. Opponents of the law believe that his use of it in any situation threatens the prerogatives of the Congress. But, again, that debate is not the focus of today's hearing. What we are focusing on today is the matter of how the law works, specifically how it has been implemented, and how the procedures for congressional action have functioned.

In my view, the line item veto has worked as intended. The President, through his use of the new authority, has succeeded in highlighting Federal spending and tax programs that otherwise would never have been the focus of public debate. Proponents of certain spending and tax items became publicly active in outlining the merits of those programs, making their case for why public resources should be used. That enhanced the accountability for the Congress and the President as well, and that is a major goal of the Line Item Veto Act, and I believe it has been a success.

In addition, the President, even with a fairly measured application of the new law, has effected budgetary savings totaling nearly $800 million. While some inside–the–Beltway budget types will dismiss that amount as a rounding error, I believe most Americans would consider it to reflect real money and hence real savings to the taxpayer. And there is no reason to believe that future years'

experience with the line item veto cannot yield even greater budgetary savings as Congress learns to avoid including questionable projects and the President improves his consistency in the use of the line item veto authority. And I don't know exactly how we tally the impact of what pork projects never did show up for fear of being exposed under the line item veto. That is a saving, but I don't know how to measure it.

In my view, even the limited application to date of the line item veto authority has demonstrated that the checks and balances in our system have not been disrupted by the new law. In one case, the judicial branch has interceded to correct a misapplication of the line item veto where its use was outside the directive of the statute. In another, the Congress availed itself of the carefully outlined procedures in the law to overturn the President's use of the line item veto for spending programs that a strong majority of Members felt were legitimate and deserving of funds. Some critics of the line item veto point to these cases as evidence to bolster their claim that the law was a bad idea. I take the contrary view. I see them as evidence that the law is working as intended. I am sure that we will delve further into these issues today and again tomorrow.

Today we will hear from public witnesses representing a variety of points of view. Tomorrow we will hear from a broad range of Members of Congress. I expect a lively discussion in both settings.

I would like to point out for the record that we had invited the Office of Management and Budget to participate in today's hearing. Although OMB has expressed interest in sharing its views on this topic, we were advised that the timing of this hearing coming after the Federal district court's ruling on the line item veto last month and before the Supreme Court's expected decision later this year would preclude OMB from testifying at this time.

[The statement of Mr. Goss follows:]

STATEMENT OF CHAIRMAN PORTER GOSS
SUBCOMMITTEE ON LEGISLATIVE & BUDGET PROCESS
"THE LINE ITEM VETO AFTER ONE YEAR:
THE PROCESS AND ITS IMPLEMENTATION
MARCH 11, 1998

GOOD MORNING. THE SUBCOMMITTEE WILL COME TO ORDER. TODAY WE BEGIN TWO DAYS OF OVERSIGHT HEARINGS ON THE IMPLEMENTATION OF THE LINE ITEM VETO ACT.

AS MEMBERS KNOW, THE PRESIDENT SIGNED THE LINE ITEM VETO ACT INTO LAW ON APRIL 9, 1996 IN AN HISTORIC CEREMONY THAT I WAS PRIVILEGED TO ATTEND. THE NEW AUTHORITY FOR THE PRESIDENT, CAREFULLY DELEGATED TO HIM WITH SPECIFIC GUIDELINES AND LIMITS BY THE CONGRESS, TOOK EFFECT ON JANUARY 1, 1997. SINCE THAT TIME, THE PRESIDENT HAS EXERCISED THIS NEW BUDGET TOOL ON 82 SEPARATE PROVISIONS OF 11 DIFFERENT LAWS FOR A NET BUDGET SAVINGS OF $798.6 MILLION. MEMBERS HAVE A SUMMARY IN THEIR PACKETS OF THE ACTIONS TAKEN BY THE PRESIDENT UNDER THE LINE ITEM VETO ACT.

MANY MEMBERS OF CONGRESS -- AND SEVERAL MEMBERS OF OUR RULES COMMITTEE, INCLUDING OUR DISTINGUISHED CHAIRMAN -- HAD WORKED FOR YEARS TO SEE THE LINE ITEM VETO BECOME A REALITY. I AM PROUD TO HAVE BEEN PART OF THAT PROCESS AND PLEASED THAT WE ARE NOW ABLE TO SPEND SOME TIME IN THIS SUBCOMMITTEE REVIEWING THE FIRST YEAR OF THE NEW LAW'S IMPLEMENTATION.

CERTAINLY THE LINE ITEM VETO HAS BEEN CONTROVERSIAL. JUST THE FACT THAT IT TOOK CONGRESS MORE THAN ONE YEAR TO RECONCILE DIFFERENCES IN THE HOUSE- AND SENATE-PASSED VERSIONS OF THE LAW IN THE 104TH CONGRESS SUGGESTS THAT. BUT THE FACT THAT THIS BUDGET TOOL HAS CARRIED WITH IT SO MUCH CONTROVERSY ALSO SUGGESTS THAT IT

HAS BEEN CAREFULLY CONSIDERED BY MANY PEOPLE ALONG THE WAY.

I HAVE BEEN SOMEWHAT DISMAYED IN RECENT WEEKS THAT SOME NEWS STORIES ABOUT THE LINE ITEM VETO ACT IN CONTEXT OF DECISIONS MADE BY PRESIDENT CLINTON HAVE SUGGESTED THAT CONGRESS RUSHED INTO ILL-ADVISED PASSAGE OF THE LAW. HAVING SAT THROUGH THAT YEAR-LONG CONFERENCE COMMITTEE PROCESS -- AND RECOGNIZING THAT MY NINE-YEAR TENURE IN THIS HOUSE SEEMS SHORT IN COMPARISON TO THE TIME THAT HAS BEEN SPENT BY ADVOCATES OF THE LINE ITEM VETO IN MAKING IT A REALITY -- I AM QUITE COMFORTABLE THAT THIS LAW WAS NOT RUSHED INTO EXISTENCE.

I UNDERSTAND THAT MY COMFORT LEVEL WILL NOT SATISFY THOSE WHO BELIEVE THE NEW LAW TO BE UNCONSTITUTIONAL AND WHO, THEREFORE, CONCLUDE THAT CONGRESS SHOULD NOT HAVE PASSED IT AND THE PRESIDENT SHOULD NOT HAVE SIGNED IT. FOR THE OUTCOME OF THAT DEBATE, WE AWAIT THE RULING OF THE SUPREME COURT, WHICH IS NOW EXPECTED TO ACT PRIOR TO JULY OF THIS YEAR.

PUTTING ASIDE THE QUESTION OF CONSTITUTIONALITY -- **A QUESTION WHICH IS NOT WITHIN THE JURISDICTION OF THIS SUBCOMMITTEE TO CONSIDER** -- I MUST SAY THAT I, LIKE MANY OF MY COLLEAGUES, HAVE DISAGREED STRONGLY WITH SOME OF THE DECISIONS THAT THIS PRESIDENT HAS MADE IN EXERCISING THE LINE ITEM VETO OVER THIS PAST YEAR. MANY PROPONENTS OF THE LINE ITEM VETO ARE TROUBLED THAT THE PRESIDENT HAS BEEN TOO TIMID OR TOO ARBITRARY IN HIS APPLICATION OF THE NEW LAW -- OPPONENTS OF THE LAW BELIEVE HIS USE OF IT IN ANY SITUATION THREATENS THE PREROGATIVES OF THE CONGRESS. BUT, AGAIN, THAT DEBATE IS NOT THE FOCUS OF TODAY'S HEARING.

WHAT WE ARE FOCUSING ON TODAY IS THE MATTER OF HOW THE LAW

WORKS -- SPECIFICALLY HOW IT HAS BEEN IMPLEMENTED AND HOW THE PROCEDURES FOR CONGRESSIONAL ACTION HAVE FUNCTIONED.

IN MY VIEW, THE LINE ITEM VETO ACT HAS WORKED AS INTENDED. THE PRESIDENT, THROUGH HIS USE OF THE NEW AUTHORITY, HAS SUCCEEDED IN HIGHLIGHTING FEDERAL SPENDING AND TAX PROGRAMS THAT OTHERWISE WOULD NEVER HAVE BEEN THE FOCUS OF PUBLIC DEBATE. PROPONENTS OF CERTAIN SPENDING AND TAX ITEMS BECAME PUBLICLY ACTIVE IN OUTLINING THE MERITS OF THOSE PROGRAMS, MAKING THEIR CASE FOR WHY PUBLIC RESOURCES SHOULD BE USED. THAT ENHANCED ACCOUNTABILITY -- FOR THE CONGRESS AND THE PRESIDENT -- WAS A MAJOR GOAL OF THE LINE ITEM VETO ACT AND I BELIEVE IT HAS BEEN A REAL SUCCESS.

IN ADDITION, THE PRESIDENT, EVEN WITH A FAIRLY MEASURED APPLICATION OF THE LAW, HAS EFFECTED BUDGETARY SAVINGS TOTALING NEARLY $800 MILLION. WHILE SOME INSIDE-THE-BELTWAY BUDGET TYPES WILL DISMISS THAT AMOUNT AS A ROUNDING ERROR, I BELIEVE MOST AMERICANS WOULD CONSIDER IT TO REFLECT "REAL MONEY" AND HENCE REAL SAVINGS TO THE TAXPAYER. AND THERE IS NO REASON TO BELIEVE THAT FUTURE YEARS' EXPERIENCE WITH THE LINE ITEM VETO CAN'T YIELD EVEN GREATER BUDGETARY SAVINGS AS CONGRESS LEARNS TO AVOID INCLUDING QUESTIONABLE PROJECTS AND THE PRESIDENT IMPROVES HIS CONSISTENCY IN THE USE OF THE LINE ITEM VETO AUTHORITY.

IN MY VIEW, EVEN THE LIMITED APPLICATION TO DATE OF THE LINE ITEM VETO AUTHORITY HAS DEMONSTRATED THAT THE CHECKS AND BALANCES IN OUR SYSTEM HAVE NOT BEEN DISRUPTED BY THE NEW LAW. IN ONE CASE, THE JUDICIAL BRANCH HAS INTERCEDED TO CORRECT A MISAPPLICATION OF THE LINE ITEM VETO WHERE ITS USE WAS OUTSIDE THE DIRECTIVE OF THE STATUTE. IN ANOTHER, THE CONGRESS AVAILED ITSELF OF THE CAREFULLY

OUTLINED PROCEDURES IN THE LAW TO OVERTURN THE PRESIDENT'S USE OF THE LINE ITEM VETO FOR SPENDING PROGRAMS THAT A STRONG MAJORITY OF MEMBERS FELT WERE LEGITIMATE AND DESERVING OF PUBLIC FUNDS.

SOME CRITICS OF THE LINE ITEM VETO LAW POINT TO THESE CASES AS EVIDENCE TO BOLSTER THEIR CLAIM THAT THE LAW WAS A BAD IDEA. I TAKE THE CONTRARY VIEW -- I SEE THEM AS EVIDENCE THAT THE LAW IS WORKING AS INTENDED.

I AM SURE THAT WE WILL DELVE FURTHER INTO THESE ISSUES TODAY AND AGAIN TOMORROW. TODAY WE HEAR FROM PUBLIC WITNESSES REPRESENTING A VARIETY OF POINTS OF VIEW. TOMORROW WE WILL HEAR FROM A BROAD RANGE OF MEMBERS OF CONGRESS. I EXPECT A LIVELY DISCUSSION IN BOTH SETTINGS.

I WOULD LIKE TO POINT OUT FOR THE RECORD THAT WE HAD INVITED THE OFFICE OF MANAGEMENT AND BUDGET TO PARTICIPATE IN TODAY'S HEARING. ALTHOUGH OMB HAS EXPRESSED INTEREST IN SHARING ITS VIEWS ON THIS TOPIC, WE WERE ADVISED THAT THE TIMING OF THIS HEARING -- COMING AFTER THE FEDERAL DISTRICT COURT RULING ON THE LINE ITEM VETO LAST MONTH AND BEFORE THE SUPREME COURT'S EXPECTED DECISION LATER THIS YEAR -- WOULD PRECLUDE OMB FROM TESTIFYING AT THIS TIME. AT THIS POINT I WISH TO INCLUDE IN THE RECORD A LETTER TO THAT EFFECT I RECEIVED FROM OMB DIRECTOR FRANKLIN RAINES.

DO OTHER MEMBERS HAVE OPENING STATEMENTS THEY WISH TO MAKE?

[OPENING STATEMENTS BY OTHER MEMBERS]

DIRECTOR O'NEILL, THE FLOOR IS YOURS.

Mr. GOSS. At this point I wish to include in the record a letter to that effect I received from OMB Director Franklin Raines.
[The information follows:]

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

March 3, 1998

The Honorable Porter J. Goss
Chairman
Subcommittee on Legislative and
Budget Process
Committee on Rules
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your invitation to testify before the Subcommittee on implementation of the Line Item Veto Act. We share your interest in making sure that the law is implemented responsibly and that the procedures in the law work well.

Unfortunately, as discussed with your staff, we will not be able to testify at this time. As you know, cases challenging the constitutionality of the Line Item Veto Act are now pending in the Supreme Court. Therefore, it would be inopportune for me to testify regarding the operation of the Act or possible changes to the Act at this time. The court is expected to rule by the end of June.

I look forward to working with you in the future on this important matter.

Sincerely,

Franklin D. Raines
Director

Mr. GOSS. I would also like to include into the record an opening statement by my Ranking Member Mr. Frost, who is presently detained elsewhere.

[The statement of Mr. Frost follows:]

STATEMENT OF HON. MARTIN FROST
RANKING DEMOCRATIC MEMBER
SUBCOMMITTEE ON LEGISLATIVE AND BUDGET PROCESS

MARCH 11, 1998

Thank you, Mr. Chairman. Today and tomorrow we are scheduled to hear a number of witnesses, both observers of the Congressional process, and participants in it, who will give us their view of the success and failures of the line item veto in its first full year of use. As the Chairman has pointed out, the purpose of these hearings is to examine the process and to determine how well did we did in the 104th Congress when the Congress wrote and passed this law.

For some time I held reservations about using the line-item veto as a means to bring the federal budget under control, but in the last Congress I came to support it in concept. I should note that during the markup in the Rules Committee in the 104th

Congress, the Democrats on this Committee supported an alternative proposal which would have provided the President enhanced rescission authority rather than the line item veto. However, since the line item veto is now the law of the land, I am supportive of this mechanism as one – and that is important – of the means to ensure that the balanced budget we have achieved will not be threatened by excessive spending. I would add that line item veto is only one part of the battle to ensure that our budget stays balanced – we cannot use the line item veto as a substitute for fiscal discipline and resolve.

And so, Mr. Chairman, thank you for calling these hearings. I think what we will hear will prove useful in our examination of how the process has worked and what we might do to improve it. I look forward to hearing from our witnesses.

Mr. GOSS. And I yield to the distinguished Chairman of the full committee, Mr. Solomon of New York.

STATEMENT OF HON. GERALD B.H. SOLOMON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. SOLOMON. Thank you, Mr. Chairman. First of all, let me apologize to our witnesses and to you. I have to leave in a few minutes to report to the Republican conference on the complicated War Powers Act and how the expedited procedure will be dealt with on the floor of this Congress. As you probably know, it is one of the worst drafted pieces of legislation that was ever signed into law and just does not work.

Having said that, let me reserve most of my remarks for tomorrow. I am going to be testifying before your panel on my feelings on the line item veto. But I want to welcome June O'Neill, and certainly my former colleague and classmate Bill Clinger, we came here together in 1978, 20 years ago, and, Bill, you look so much younger having been gone just a few years. I think maybe some of us should follow your lead here.

But, Mr. Chairman, you are so right, and we must absolutely follow the line item veto. You know, all through the history of this country, Presidents have had veto authority, veto authority to veto any bill that would be laid on his or her desk. And the line item veto is a further follow-through on that veto authority. It simply gives a President, whoever that President might be, the ability to veto a line item for whatever reason he might choose.

Some of us were not pleased with the way the President used the line item veto. Nevertheless, I feel that he ought to have that authority. And if in the infinite wisdom of the Congress, and if two-thirds of the Congress want to override that veto, they have that ability. So I would just hope that after we proceed through these hearings, that we are able to convince our colleagues in the other body as well that this is a very, very vital tool for any President.

Having said that, Bill Clinger will not be here tomorrow when I testify. But, Bill, I just want to thank you for all of your efforts. You were the key in getting this legislation through. You and I and others along with Porter Goss negotiated with our friends over in the Senate who were not very happy with this legislation at the beginning. And to convince Ted Stevens, Senator Domenici and others, to go along with this is a real feather in your cap, sir.

So, having said all of that, June, I apologize for having to leave in a few minutes, but we look forward to your testimony.

I thank you, sir.

Mr. GOSS. Thank you, Mr. Chairman.

Mr. GOSS. We have been joined by our distinguished Ranking Member Mr. Frost.

Congratulations, and good morning.

STATEMENT OF HON. MARTIN FROST, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. FROST. Thank you. We had a little election in California, and that is what we were speaking of.

I do want to—I know my remarks were put in the record, but they are very brief, and I would like to read them if I may.

Mr. Chairman, today and tomorrow we are scheduled to hear a number of witnesses, both observers of the congressional process and participants in it, who will give us their views on the success and failures of the line item veto in its first full year of use. As the Chairman has pointed out, the purpose of the hearings is to examine the process and to determine how well we did in the 104th Congress when the Congress wrote and passed this law.

For some time I personally held reservations about using the line item veto as a means to bring the Federal budget under control, but in the last Congress I decided to support the concept. I should note that during the markup of the Rules Committee in the 104th Congress, the Democrats on this committee supported an alternative proposal which would have provided the President enhanced rescission authority rather than the line item veto. However, since the line item veto is now the law of the land, I am supportive of this mechanism as one—and that is important—as one of the means to ensure that the balanced budget we have achieved will not be threatened by excessive spending. I would add that line item veto is only one part of the battle to ensure that our budget stays balanced. We cannot use the line item veto as a substitute for fiscal discipline and resolve.

So, Mr. Chairman, thank you for calling these hearings. I think that what we will hear will prove useful in our examination of how the process has worked and what we might do to improve it. I look forward to hearing from our witnesses, and, of course, the matter is still in the courts, as we know, and must be resolved by the legal branch, but I think this hearing will be very helpful. Thank you very much.

Mr. GOSS. Thank you, Mr. Frost.

Mr. GOSS. At this time, we welcome somebody who is familiar and a welcomed participant in the proceedings on these matters, Dr. June O'Neill of CBO, and we are prepared to receive your statement, and we will accept it as written and include that in the record, and additionally anything you wish to add.

STATEMENT OF JUNE E. O'NEILL, DIRECTOR, CONGRESSIONAL BUDGET OFFICE

Ms. O'NEILL. Chairman Goss, Chairman Solomon, Congressman Frost, thank you very much for inviting me to testify today. I will briefly summarize my prepared statement.

The Line Item Veto Act took effect in January of 1997 and is scheduled to expire eight years later. The act enables the President to cancel individual provisions of budgetary laws that he views as wasteful or harmful to fiscal discipline. That new power gives the President an expanded role in the budget process.

The act was passed following years of contentious debate, and that debate continues in the courts. Last month, the D.C. District Court declared the act unconstitutional. The Supreme Court is scheduled to review the district court's ruling in April, I believe.

One year's experience is probably not sufficient to evaluate the budgetary impact of the Line Item Veto Act, not to mention its

broader effects on resource allocation. The following observations, however, may be useful.

The cancellations made by the President in 1997 would not significantly affect total spending or revenue levels. CBO estimates that the President's 82 cancellations combined would save about $355 million in fiscal year 1998, out of a total budget of $1.7 trillion. Moreover, the Congress and the courts have overturned some of the President's cancellations. As a result, the total 5-year savings were reduced by more than one-third—from just under $1 billion to less than $600 million. Most of the President's cancellations were applied to appropriation acts, and military construction accounted for a significant share. All of the military construction cancellations were overturned by the Congress.

The experience of the past year, however, may not provide an appropriate test of the President's use of the line item veto for several reasons. First, the relatively small magnitude of the President's cancellations may be the result of unusual circumstances, in particular the passage of the balanced budget agreement and the long period of difficult negotiations that preceded it.

Second, the act may prompt changes in behavior that only become evident as time passes. For example, the threat of the President's cancellation authority, in conjunction with the act's lockbox mechanism, could restrain the Congress from enacting certain provisions. In that case, the President could attain more of his priorities without having to utilize his cancellation authority.

On the other hand, the Congress could try to evade the President's veto authority by making modifications to spending and revenue legislation. Studies of the item veto at the State level have shown how State legislatures have developed ways to limit the budgetary impact of governors' authority.

Further, the President's inclination to exercise his cancellation authority may depend on a host of political factors. CBO is now projecting budget surpluses, which appear to be causing some unaccustomed problems for Congressional committees. Surpluses also pose uncertainties for the Line Item Veto Act. In fact, the President's cancellation authority may not hold if the budget is in surplus. The act itself is not clear on that question.

The mechanics of the act generally functioned as expected last year, but with one exception: the President's cancellation of the Federal Employees' Retirement System–open season provision. In canceling that provision, which allows certain Federal employees to switch retirement plans, the President apparently misclassified governmental receipts as a form of spending. That cancellation was subsequently nullified by court order.

Some Members took exception to the President's justifications for his cancellations. Some felt he should have applied more rigorous, consistent criteria. However, nothing in the Line Item Veto Act requires the President to employ particular rationales. It requires him only to declare the reasons for the cancellations.

With respect to his military construction cancellations—which, as I noted, were overturned by the Congress—the President later acknowledged that some projects were canceled on the basis of outdated information.

If the Line Item Veto Act is ultimately declared to be unconstitutional, lawmakers who still wish to grant the President greater budgetary powers could pursue other alternatives. Amending the Constitution to grant the President line item veto authority is, of course, one option. Another would be to establish an expedited rescission process. In any event, the original provisions of the Impoundment Control Act of 1974 would remain in effect.

If the line item veto withstands constitutional challenge, lawmakers will still need to evaluate its performance and to consider whether any budgetary gains of the act outweigh the risks of shifting power to the President.

Thank you. I would be happy to answer any questions if you have them.

Mr. GOSS. Thank you very much.

[The statement of Ms. O'Neill follows:]

Chairman Goss, Congressman Frost, and members of the Subcommittee, thank you for inviting me to testify today on the first year of the Line Item Veto Act. The act, which took effect on January 1, 1997 (and expires eight years later), grants the President the authority to cancel certain new spending or limited tax-benefit provisions that he signs into law. Its basic purpose is to enable the President to eliminate wasteful, unnecessary, or special-interest budgetary provisions in order to reduce the federal budget deficit.

The Line Item Veto Act marks a significant milestone in the federal budget process. Its passage followed years of contentious debate over the wisdom of delegating this expanded authority to the President. Opinion remains sharply divided. Last month, the D.C. District Court declared the act unconstitutional; the Supreme Court is scheduled to review the District Court's ruling in April.

My testimony this morning will make the following points:

- One year's experience is probably not sufficient to evaluate the fiscal impact of the Line Item Veto Act. Although the Congressional Budget Office (CBO) estimates that the overall budgetary effect of the President's 1997 cancellations is relatively small, that result may be due in part to temporary factors. Further, some effects may be difficult to observe, and others may arise as lawmakers gain more experience under the act.

- CBO's most recent baseline estimates project budget surpluses for 1998 and the rest of the period during which the act is scheduled to remain in effect. Because the act's stated purpose is to reduce the deficit, some people have argued that a budget surplus would suspend the President's cancellation authority. The act itself is unclear on that question.

- With one exception—the President's cancellation of the Federal Employees Retirement System (FERS) open-season provision—the mechanics of the act generally functioned as expected last year. In canceling the FERS provision, the President apparently misclassified governmental receipts as a form of spending. The cancellation was subsequently nullified by court order because such receipts generally are not subject to the President's cancellation authority.

- If the act is declared unconstitutional, the Congress may consider other options for expanding the President's rescission authority.

The issues covered in this testimony are discussed in greater detail in a CBO memorandum, *The Line Item Veto Act After One Year*, which will be released later this month.

INTRODUCTION

Advocates of the Line Item Veto Act view the President's cancellation authority as a significant tool for eliminating wasteful budgetary provisions and maintaining fiscal discipline. The act enables the President to cancel individual provisions without having to veto an entire measure. Thus, supporters claim, the President can eliminate "pork-barrel" provisions that Members of Congress passed to benefit their own narrow constituencies. Supporters contend that the President, who is elected by the nation as a whole, is better able to decide whether particular budgetary provisions serve the national interest. Moreover, the act's "lockbox" mechanism, which lowers the statutory limits on discretionary spending for cancellations that are not overturned, precludes any savings from being spent elsewhere.

Opposition to the act focuses on the issues of effectiveness and constitutionality. Some opponents argue that any budgetary savings from the line-item veto would be minimal or effectively negated because the President's budgetary priorities would tend to replace those of the Congress. From that perspective, the national interest is better represented by a consensus of lawmakers. Another argument concerns the act's effect on the constitutional balance of power; it makes the case that the act's shifting of power to the President is an unconstitutional delegation of legislative authority.

Before the Line Item Veto Act, the President could only propose to cancel spending. Those proposals would go into effect permanently only if they were enacted into law. Under the act, by contrast, the President can unilaterally cancel certain spending and tax-benefit provisions that he has signed into law, and cancellations can be reversed only by a subsequent law. Because the President would probably veto any such legislation, disapproving or reversing a cancellation would most likely require the support of two-thirds of the Congress, the margin necessary to override a veto.

Over the years, much of the debate about the item veto has involved how items subject to the veto should be defined and identified. In the past, various item-veto proposals were considered more or less sweeping depending on the range of provisions that could be vetoed and on how much discretion the President would have to identify those provisions and determine the amount to be vetoed.

Under the Line Item Veto Act, the President may cancel three broad categories of spending or revenue law:

- Any "dollar amount of discretionary budget authority," which is defined as a whole-dollar amount of budget authority provided and controlled in an annual appropriation act. The President can cancel amounts specified in an appropriation act, detailed in the conference

report or "governing committee report" on an appropriation act, or provided in an appropriation act but "required to be allocated" by a different law (such as an authorization law).

- Any "item of new direct spending," defined as a provision of law that would increase budget authority or outlays for direct spending above baseline levels. (Direct, or mandatory, spending consists mainly of entitlement programs.) Under the act, the baseline must be calculated under current conventions, and the term "direct spending" has the same meaning that it has for other budget enforcement procedures.

- Any "limited tax benefit," which is defined as a revenue-losing provision that provides a tax deduction, benefit, credit, exclusion, or preference to 100 or fewer beneficiaries, or a tax provision that provides "temporary or permanent transitional relief for 10 or fewer beneficiaries." The act establishes procedures to restrict the President's cancellation authority over limited tax benefits. It requires the Joint Committee on Taxation (JCT) to provide a statement identifying any limited tax benefits (or declaring that none exist) for any revenue measure pending before a House/Senate conference committee. The JCT statement may be included as a separate section of the measure. If it is, the President can cancel only the limited tax benefits that it identifies.

BUDGETARY EFFECTS OF 1997 CANCELLATIONS

CBO estimates that the cancellations made by the President in 1997 would have only a small effect on total spending or revenue levels. The President made 82 cancellations from 11 laws (two reconciliation acts and nine regular appropriation acts). CBO estimates that, in total, those cancellations would save about $355 million in fiscal year 1998 and just under $1 billion for the five-year period through 2002 (see Table 1). By comparison, total federal spending and revenues in 1998 are both estimated to be nearly $1.7 trillion. The Congress and the courts have overturned some of the President's cancellations, thereby lowering the total five-year savings by more than one-third, to less than $600 million.

Most of the President's cancellations (79 of the 82) were applied to appropriation acts. Of those, two-thirds came from the military construction and Department of Defense acts; they accounted for 90 percent of the dollar reduction in 1998 discretionary appropriations made by the President's cancellations. However, that amount is still minor compared with total defense appropriations. Two-thirds of the defense cancellations (those from the military construction act) were subsequently overturned by the Congress.

The experience of last year may not provide an appropriate test of the President's use of the line-item veto, in part because of the passage of the balanced

TABLE 1. CANCELLATIONS MADE BY THE PRESIDENT IN 1997 UNDER THE LINE ITEM VETO ACT (By fiscal year, in millions of dollars)

Cancellation Number(s) 97-	Act	Budget Category	Amount Canceled 1998	1999	2000	2001	2002
	Spending Cancellations						
1	Balanced Budget Act of 1997	BA	-200	0	0	0	0
		O	-200	0	0	0	0
4-41	Military Construction Appropriations Act, 1998[a]	BA	-287	0	0	0	0
		O	-28	-102	-79	-46	-16
42-55	Defense Appropriations Act, 1998	BA	-144	0	0	0	0
		O	-73	-49	-12	-4	-4
56	Treasury Appropriations Act, 1998[b]	BA	2	12	13	13	14
		O	2	12	13	13	14
57-64	Energy and Water Appropriations Act, 1998	BA	-19	0	0	0	0
		O	-12	-4	c	0	0
65-71	Veterans, HUD Appropriations Act, 1998	BA	-16	0	0	0	0
		O	-7	-6	-1	0	0
72-74	Transportation Appropriations Act, 1998	BA	-6	0	0	0	0
		O	-2	-3	0	0	0
75-76	Interior Appropriations Act, 1998	BA	-2	-1	-1	-1	-1
		O	-2	-1	-1	-1	-1
77-81	Agriculture Appropriations Act, 1998	BA	-2	0	0	0	0
		O	c	-2	c	c	0
82	Commerce, Justice Appropriations Act, 1998	BA	-5	0	0	0	0
		O	-4	-1	c	0	0
Total Spending Cancellations		BA	-677	11	12	12	13
		O	-326	-156	-80	-39	-7
	Tax-Benefit/Revenue Cancellations						
2-3	Taxpayer Relief Act of 1997	REV	25	136	8	5	4
56	Treasury Appropriations Act, 1998[b]	REV	4	35	37	37	38
Total Tax-Benefit/Revenue Cancellations		REV	29	171	45	42	42
	All Cancellations						
Total Budgetary Effect of All Cancellations[d]		e	-355	-327	-125	-81	-49

(Continued)

TABLE 1. CONTINUED

Cancellation Number(s) 97-	Act	Budget Category	Amount Canceled 1998	1999	2000	2001	2002
	Cancellations Overturned						
4-41	Military Construction Appropriations Act, 1998[a]	BA	287	0	0	0	0
		O	28	102	79	46	16
56	Treasury Appropriations Act, 1998[b]	BA	-2	-12	-13	-13	-14
		O	-2	-12	-13	-13	-14
		REV	-4	-35	-37	-37	-38
Total Budgetary Effect of Cancellations Overturned[d]		e	30	125	103	70	40
	All Cancellations Except Those Overturned						
Net Budgetary Effect of Cancellations as of February 1998[d]		e	-325	-202	-22	-11	-9

SOURCE: Congressional Budget Office.

NOTES: Numbers may not add up to totals because of rounding.

BA = budget authority; O = outlays; REV = revenues; HUD = Department of Housing and Urban Development.

a. On February 25, 1998, the Congress enacted a disapproval bill (H.R. 2631) over the President's veto that nullified all 38 cancellations made from the 1998 Military Construction Appropriations Act.

b. On January 6, 1998, the D.C. District Court invalidated cancellation 97-56 (the FERS open-season provision). CBO estimates that the cancellation would have increased on-budget direct spending and revenues. The spending and revenue effects of the cancellation are identified separately in this table.

c. Less than $500,000.

d. Negative numbers indicate a decrease in the deficit or an increase in the surplus.

e. Outlays minus revenues (excludes budget authority).

budget agreement. That agreement took more than two years of difficult negotiations to reach. As a consequence, the President may have been more reluctant to exercise his cancellation authority than would otherwise be the case. Moreover, the negotiations themselves may have involved agreements on provisions that the President might have been inclined to cancel.

To the extent that the Line Item Veto Act shifts power from the Congress to the President, it may change behavior in subtle ways that are difficult to observe. For example, the threat of the President's cancellation authority, in conjunction with the act's lockbox mechanism, could restrain the Congress from including some of the so-called pork-barrel provisions that it might otherwise have incorporated. Or the Congress might accommodate some of the President's priorities, thereby increasing the total share of special-interest spending. Alternatively, it might modify the structure of spending and revenue legislation to protect certain provisions and effectively circumscribe the President's authority (although there does not appear to be any evidence of that happening in 1997). For example, the Congress could consolidate appropriation earmarks into larger lump-sum appropriations, thereby reducing the number of items subject to cancellation. Studies of the item veto at the state level have documented those and similar devices employed by state legislatures over the years to limit the budgetary impact of governors' item-veto authority.

Moreover, the President's inclination to exercise his cancellation authority may depend on a host of political factors, including whether he and the Congressional majorities are of the same or opposing political parties.

EFFECT OF PROJECTED SURPLUSES

The Line Item Veto Act states that the President must determine, among other things, that a cancellation "will reduce the Federal budget deficit." However, CBO is now projecting budget surpluses beyond the scheduled duration of the act. Estimates by the Office and Management Budget (OMB) reflect the same general trend, and the President has proposed a balanced budget for fiscal year 1999.

Some observers believe that the President's cancellation authority may not remain in effect if the budget is in surplus. The act itself is unclear on that question.

Although the act requires the President to certify generally that his cancellations will reduce the deficit, it does not require him to specify in which fiscal years deficits must be reduced. Further, the act does not explicitly suspend the President's authority if a surplus develops; in fact, it does not use the term "surplus." Consequently, it is unclear, for example, whether a projected surplus would be

enough to suspend the President's authority, or whether there must have been an actual surplus in the previous fiscal year.

Those and other ambiguities make the legal significance of the act's deficit criterion unclear. Unless the act is modified, the President's judgment on this matter will most likely be the deciding one. In any event, his cancellation authority is optional. The act does not require him to exercise that authority or to reveal his reasons for not doing so.

HOW THE ACT HAS FUNCTIONED

In a formal sense, the Line Item Veto Act largely functioned last year as expected. With one exception, the President appeared to comply with the terms and conditions of the law. Estimates by OMB and CBO of the cancellations were generally similar. (The act directs CBO to prepare advisory estimates of any cancellations, but the President's estimates and determinations are controlling.) The fast-track procedures under which the Congress considers disapproval bills worked as anticipated; they permitted the Congress to disapprove the President's military construction cancellations once a strong consensus had formed to do so. The one exception, the cancellation of the FERS open-season provision, was challenged in court and was nullified by a District Court order earlier this year.

Criteria for Cancellations

Some Members and observers took exception to the President's reasons for making various cancellations. Some critics felt he should apply more rigorous, uniform criteria. Others felt he should inform the Congress of his reasons in advance of his cancellations. Some were also concerned that the President used his own budget submission too frequently in deciding whether to cancel particular provisions.

However, nothing in the Line Item Veto Act requires the President to employ particular rationales. The act simply requires him to certify that his cancellation "will reduce the Federal budget deficit; not impair any essential Government functions; and not harm the national interest." In addition, he must declare "the reasons for the cancellation." For each 1997 cancellation, the President included a statement certifying that the cancellations met those three broad standards and explaining his reasons for making them.

With respect to the military construction cancellations, many Members felt that the President did not apply his reasons fairly. They also believed that the President relied on erroneous information. The President later acknowledged that some projects were canceled on the basis of outdated information but did not agree that all of the cancellations suffered from that problem. Under the act, once a cancellation is made, it can only be reversed by the enactment of a disapproval bill.

The FERS Open-Season Cancellation

On October 16, 1997, the President canceled a provision in the 1998 Treasury and General Government Appropriations Act that authorizes a new open season for federal employees covered by the Civil Service Retirement System to switch to the Federal Employees Retirement System. Unlike the other cancellations made in 1997, this one drew attention for the manner in which the President exercised his cancellation authority. The National Treasury Employees Union (NTEU) filed a legal challenge to the cancellation in part on the grounds that the President had exceeded his authority. On January 6, 1998, the D.C. District Court, pursuant to a settlement between the NTEU and the Justice Department, issued an order nullifying the cancellation.

The effects of the FERS open-season provision are complicated (as CBO testified to the Subcommittee on Civil Service of the House Committee on Government Reform and Oversight last November). Unlike other activities canceled in appropriation acts, that provision changes mandatory spending and revenue levels and affects both on-budget programs (federal retirement) and off-budget programs (Social Security and the Postal Service). At issue in the legal challenge was whether the President misclassified a projected loss of receipts from the provision as an increase in discretionary budget authority, which could then be canceled.

In his cancellation message, the President estimated that the provision would lower employee contributions to the Civil Service Retirement and Disability Trust Fund by $854 million from 1998 to 2002. For purposes of his cancellation, the President classified those lower expected receipts as dollar amounts of discretionary budget authority. The Line Item Veto Act, however, does not support such a classification. Instead, it anticipates that a cancellation made from an appropriation act will involve only spending provided in that act.

OPTIONS IF THE ACT IS INVALIDATED

Several legal challenges to the constitutionality of the Line Item Veto Act have been heard. On February 12, the D.C. District Court declared the act unconstitutional on the grounds that it "violates the procedural requirements ordained in Article I of the United States Constitution and impermissibly upsets the balance of powers." The District Court's ruling has been appealed to the Supreme Court, which is scheduled to hear the case in April. If the Line Item Veto Act is ultimately declared unconstitutional, lawmakers will face the question of whether to pursue other alternatives that would accomplish their original objectives.

Amending the Constitution to grant the President line-item veto authority is one option, although one that is difficult to carry out. Another option, proposed in

the past, would establish a so-called expedited rescission process. Under expedited rescission, fast-track legislative procedures could be created to ensure that the President's proposed spending cuts or tax-benefit repeals would receive an up-or-down vote by the Congress. But the President's proposals would go into effect only if enacted into law. Although the President would not have unilateral authority to cancel provisions of law, his proposals could not be ignored by the Congress.

Of course, whatever the final judicial outcome, the original provisions of the Impoundment Control Act of 1974, which the Line Item Veto Act amended, would remain in effect. According to the General Accounting Office, Presidents proposed about $75 billion in rescissions under the 1974 law between fiscal years 1974 and 1996. The Congress agreed to only about one-third of those proposed rescissions (about $25 billion) but initiated another $93 billion of rescissions, bringing the total amount rescinded during that period to around $118 billion.

CONCLUSION

Firm conclusions about the effects of the Line Item Veto Act cannot be drawn from one year's experience. The President's 1997 cancellations were relatively small, but political and budgetary conditions can change significantly from year to year. If implemented aggressively, the act gives the President authority to bring about

potentially large budgetary savings. However, if used too aggressively, that authority could lead to a backlash from the Congress and the public. The Congress has already demonstrated its willingness to act decisively on cancellations with which it overwhelmingly disagrees. Further, as lawmakers gain more experience with the act, they are likely to develop new techniques for restricting the President's authority.

The framers of the act, appreciating the significance of the authority they were delegating, chose to make it expire after eight years. If the act withstands constitutional challenge, the question lawmakers will face as they evaluate its performance is similar to the one they addressed upon its enactment: do the budgetary gains of the act outweigh the risks of shifting power to the President? If the act has only a limited effect on spending or revenue levels, policymakers should ask whether those small savings justify the transfer of power or other potential problems. If, by contrast, the President uses his cancellation authority aggressively, lawmakers should ask whether significant budgetary changes should be made in such a manner.

Mr. GOSS. I would point out that that was a very much abbreviated testimony compared to the written testimony, which is very comprehensive. And I wanted to express before I got into some questions two points that you had made in your written testimony. One had to do with the surplus question, and the conclusion is that unless the act is modified, the President's judgment on this matter of surpluses will most likely be the deciding one, and I presume that is your conclusion still?

Ms. O'NEILL. Yes, that is.

Mr. GOSS. Mr. Chairman, I don't want to preclude any questions that you may have.

Mr. SOLOMON. I am sorry. I must leave.

Mr. GOSS. I understand. Thank you.

The second one is that on the page 11 of your testimony about how the act has functioned, you make the statement, in a formal sense the Line Item Veto Act largely functioned last year as expected. And with the exception of the first problem, that is still your conclusion, I take it?

Ms. O'NEILL. Yes.

Mr. GOSS. There were no anomalies or extraordinary, unexpected events from your perspective?

Ms. O'NEILL. No, the rules seemed to be followed and generally understood.

Mr. GOSS. The area of questions that I wanted to go into, again because we are dealing pretty much with procedure here, is if you or your staff have found any problems in this first year of implementation with regard to any of the procedures for congressional response, because that was the subject of a lot of intricate discussion, as you know, and a very complicated formula. Has anything come to your attention with regard to the procedures to our response to the President's use of the authority?

Ms. O'NEILL. No, not really, certainly not in a formal sense. There are procedural issues that have nothing to do with the line item veto act but that have to do with the stage at which the President responds. There may be a learning curve for those.

Mr. GOSS. I think what I was getting into is that it was not easy to explain in 30 seconds. I think everybody finally did understand it. The test cases we have had with it seem to have worked pretty well from our perspective. Is that your conclusion as well?

Ms. O'NEILL. Yes, that is exactly right.

Mr. GOSS. And the other area of issue that I wanted to go into is the question of accountability. One of the reasons that I think that this law is important is that I think that it really does focus accountability on specific projects and specific areas. I don't know whether that would happen otherwise or not. My guess is that it is sort of hit or miss. But when there is a line item veto, I think it does get attention one way or the other, and I think then if Congress really wants to take a stand to overcome that, then it gets a lot of attention. Are those conclusions that you would agree with or not?

Ms. O'NEILL. Yes, it does focus attention; I would agree with that.

Mr. GOSS. And the last question in that line, the other thing in the act that I think is very important, and I don't know how to measure this, is that I think it creates a bias for not spending rather than a bias for spending. The savings are not as great as I would like to see, but again, I cannot measure what did not show up as a result of the act. I don't know if you can measure that or not.

Ms. O'NEILL. That is a problem. What the counterfactual is will never be totally known. However, I would point out that the lockbox mechanism is a feature that does keep the line item veto on the side of preventing additional spending, because trading priorities can end up increasing spending, especially when we have budgetary caps.

Mr. GOSS. And I agree with you. It is puzzling to have surpluses to deal with. I hope we have them.

Mr. Frost?

Mr. FROST. I was out of the room, so you may have covered some of this, but assuming that the Supreme Court does act this term on the line item veto, that they decide the case by June 30th so that we will still be in session, and assuming that they were to uphold the decision of the lower court and invalidate the line item veto, and I don't know what the Supreme Court is going to do, I am just assuming for the sake of argument, would you be prepared or would anyone in your office be prepared to make recommendations to this committee or to the Congress on how to rewrite the line item veto to make it constitutional in compliance with the Court decision?

Ms. O'NEILL. There are people at CBO who work with the legal aspects (although budgetary aspects are typically our forte) and we would certainly help, to the extent that we are able, in providing technical information.

Mr. FROST. Has anyone at CBO taken an initial look at the lower court decision and made any efforts to figure out how to redraft the line item veto in the event that the lower court decision were upheld?

Ms. O'NEILL. Our General Counsel has examined it, but I do not believe that we have actually taken steps to see how it could be redrafted.

Mr. FROST. Okay. I don't have anything further.

Mr. GOSS. Thank you.

I would presume that if we get some instruction from the Court, that we are going to react to it. So if we don't get some intruction from the Court, we are going to continue to deal with this. If we do get some instruction from the Court, we are going to do something different.

Mr. FROST. Of course, Mr. Chairman, the Court would not necessarily instruct Congress. It would just say—if the Court were to strike down the act would just say it is gone, and then it would be up to Congress to try and redraft it. I don't think the Court would tell us, you have to redraft it, or you have to try again.

Mr. GOSS. I take your point as clarification. My view is that if it is found to be unconstitutional, we will have to do one thing. If it is found to be constitutional, we will continue to have to monitor it. Either way we have work to do.

Thank you. Thank you very much.

Mr. Dreier has just joined us. Do you have any questions?

Mr. DREIER. I have a whole litany of questions based on what I just heard. No, thank you very much.

Mr. GOSS. The distinguished gentleman from California's timely comments are much appreciated, and we welcome him. Thank you very much. That is very kind of you. And we will be continually in touch as matters develop.

Our next witness this morning is someone well-known to us, Mr. William Clinger of Pennsylvania.

Mr. Chairman, we welcome you. It is a pleasure personally for me to say hello and glad to see you back. There is a certain pride of authorship here that gives you special privilege to make comments and share wisdom on this subject with us.

STATEMENT OF HON. WILLIAM CLINGER, A FORMER REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. CLINGER. Mr. Chairman, I thank you very much for your welcome. I am delighted to have the opportunity to appear before your subcommittee. If I fall asleep during my presentation, I hope you will forgive me. I am a little jet-lagged from just having returned from New Zealand. So I hope I stay awake to complete my statement. But I appreciate the opportunity because I have observed the implementation of the line item veto in the year it has now been in being and do have some comments about that.

I think one of the points that I would like to stress is that there has been a base canard around that somehow this act was thrown together, a slapdash effort, that not a lot of serious thought went into the provisions, and it is a jury-rigged piece of legislation that is going to be troublesome down through the years. And I would hope to be able to dispel that canard this morning.

I think, frankly, that the legislation has stood up well during the year that it has been in operation. And I would say that perhaps the mode that we are in at the present time was the best one to really challenge the act because we have divided government. We have executive branch under the control of one party and Congress under the control of another, and that obviously creates higher stress than if we had one-party control of both branches. So I think the act has really been well-tested during this year.

Just a very brief history. Of course we all know that the whole concept of the line item veto is not new. The first suggestion of a line item veto was introduced in 1876. But I would also say that in more recent times during my tenure alone, both as Ranking Member and later as Chairman of the Government Reform and Oversight Committee, we held more than a dozen hearings on line item veto legislation, as well as related proposals. So this was not something that got short shrift. It really got very thorough, exhaustive, one might even say tedious consideration over a long period of time.

In addition, the House considered weaker expedited provision bills in 1992, 1993, and again in 1994, and twice in the 103rd Congress, two Congresses ago, it narrowly rejected substitute amendments to replace the less effective expedited rescission proposals

with the line item veto. It was during the last of those three Congresses that I introduced H.R. 2, the Line Item Veto Act, on the opening day of the 104th Congress and was joined in that effort by former Congressman Blute, Congressman Neumann and Congressman Parker. I have to admit to an act of plagiarism in this regard because the bill was virtually identical to the line item veto substitute that had been drafted by Chairman Solomon and offered as a substitute during the expedited rescission procedure.

We held a joint hearing in the Committee on Government Reform with the Senate Government Affairs Committee on January 12 of 1995, and the comments and the suggestions that came as a result of that hearing were almost unanimous in support of the concept, of the need for a device such as the line item veto to put some sort of control on spending and to switch the focus from encouraging spending to discouraging spending. And I think that was the bottom line of what we were trying to achieve.

We had one objector, and that was a witness from the judicial conference who opposed applying the bill to the judicial branch. At the time we marked up the bill on January 25, we had a very long, wide-ranging discussion in the committee, and we adopted 6 of 10 amendments that were offered to the bill, and it was reported out of my committee by a vote of 30 to 11. And together with you, Mr. Chairman, the Rules Committee, we brought the bill to the floor and debated that bill very thoroughly over a long period, three days, February 2, 3 and 6 in 1995. And the bill was finally adopted, as you know, Mr. Chairman, by a vote of 294 to 134.

The Senate, the other body, took a little bit longer in fashioning their version of the bill, but they finally agreed to something they called the separate enrollment version on March 23rd of 1995. We got the bill back in the House two months later, and although we did not appoint conferees until September, we immediately began what turned out to be a very long and extraordinarily difficult process of reconciling those two very different versions of the bill, and they couldn't have been more different. It was almost as if they were not on the same subject.

But I think you and I would agree, Mr. Chairman, that the Senate version was a charade. That is the best way you could characterize it. It was never intended to work. It would not have worked. It was going to require a separate bill for every separate line item, and if anything was a jury-rigged, thrown-together piece of legislation, it was that one. Being no longer a Member of the House body, I can afford to be somewhat critical of the effort of the other body.

Mr. Chairman, you and I and Chairman Solomon, as you know, spent untold hours working with the House and Senate leadership and with the prime Senate sponsors, and those were Senators McCain and Senator Coats, and with the members of the Appropriations, Ways and Means and Senate Finance Committee to develop a conference strategy and achieve a workable compromise. I would stress that we didn't do this in a vacuum. Our efforts were assisted by a panoply of legal scholars from the Department of Justice, Congressional Research Service, GAO, as well as outside private counsels. This was a piece of legislation that was very thoroughly vetted by a lot of experts, and I am convinced it will withstand a constitutional challenge.

I thought what we achieved was very worthwhile. It did encourage savings and deficit reduction by requiring a two-thirds vote of each house to override the President's veto. But it did preserve, and I think this is important, this body's ability to insist on its spending priorities in cases where it really felt the President had overreached. And I think the fact that that power has been exercised with regard to the disapproval bill of the vetoed items in the military construction, and it has worked.

That we were successful in achieving that careful balance, I think, has been borne out by the savings achieved. So I think it was a successful bill, Mr. Chairman, and as I have observed it from the outside over the last year, I think it worked well, and I would hope that the Supreme Court will uphold it even though—we know that the nine people who are going to decide the fate of this bill were not in that conference and, therefore, not perhaps at this point as aware of the many long hours and the thought that went into achieving enactment. But I certainly enjoyed the process, and I also have great pleasure to come back and see old friends again.

Thank you, Mr. Chairman.

Mr. GOSS. Thank you very much, Bill. It is always a pleasure to have somebody who knows intimately how a bill came into being to testify on the subject.

Mr. GOSS. One of the questions I was going to ask was do you think that we rushed to judgment on this, full well knowing what the answer would be.

I consider it one of the longer, more agonizing negotiations of my life up here, and I congratulate you, again, for the extraordinary patience you showed and the leadership you showed to patch that together, knowing where we started from with the U.S. Senate, which is a very distinguished body that we sometimes have different products, as we discovered.

The only other area that I wanted to ask about in terms of the functioning, one of the questions that always comes up is the same question that we had as we were going through the process. The question basically is sort of a political question. It is did we cede too much power to the executive branch? My personal view is that there is no evidence to show that, because I think that you have testified milcon clearly shows that there is a will to put the process in place. The process works, and you can get done what Congress wants to get done. Do you draw any other conclusions?

Mr. CLINGER. I really don't. I think that we did obviously reserve to the Congress the power to override the President's veto as we can for any other piece of legislation. Now it comes at the end of the line after a disapproval bill has been submitted, and the President then vetoes the disapproval bill, and then you get a two-thirds vote. It is a very carefully balanced procedure here that says to the President, yes, you may zero these things out, but if we choose to disapprove, then we can enact and pass and send to you a bill of disapproval, which if you then veto that, we have the power to come back and override your veto.

So it seems to me that what we have here is not unique. I mean, we have given the President discretionary power in a lot of areas over time. This is not any different, really, than other areas of discretionary spending. And there are, you know, significant checks on

what he is able to do and how he is able to do it. I think the legislation by necessity needed to be very specific in exactly how far the President could go and exactly how he could implement that. So I am not concerned that we have profligately given away all of our powers to control spending.

Mr. GOSS. That is my conclusion as well.

Mr. Frost?

Mr. FROST. I have nothing.

Mr. GOSS. Mr. Dreier.

Mr. DREIER. Thank you very much, Mr. Chairman. Let me first join in welcoming Bill Clinger back. I almost feel as if we should have, at the end of the 100 days of 1995, put your name on one of the chairs there, because I think of not only the line item veto, but unfunded mandates. I think more legislation during that first 100 days came from you and the Government Reform and Oversight Committee than any other committee, and I just want to say so. You obviously feel very, very comfortable sitting in that chair that you have filled on so many occasions.

Let me just raise one question. The most recent issue that has been on the forefront was the case where actually I suppose the legislative branch clearly exercised its authority in response to the veto of the military construction bill. And I wonder if you have any comment at all on how that was handled. I am sure you must have observed that.

Mr. CLINGER. I did observe that, and it seemed to me that that was—well, one of the concerns has always been that the President would use the power in a political manner; in other words, that it would be politically textured. I don't know whether that is, in fact, the case here, but clearly the power that the Congress retains to say, no, Mr. President, we think you have gone too far was appropriate here because, as it turned out, as the President himself later admitted, that he was operating on the basis of bad information in some of the line items that he had vetoed out. So I think the process worked by at least forcing the President to take another look at the matter, and when he did take a look, realized that he was really basing it on faulty information. So it seems to me that the process did work as we intended it to work when we drafted the legislation.

Mr. DREIER. I wonder if you have any—if you can project at all as to what will happen in the courts on this.

Mr. CLINGER. I think—my gut feeling is that the Court should overturn the lower court, because as I said, I think when we drafted this legislation, we were certainly aware that there were going to be constitutional challenges. I mean, it did represent a change in the balance, if you will, to some extent. So we were very conscious of the fact that there would be challenges, and that is why, as I indicated, we called in a lot of experts and did an awful lot of research on the matter, and under the delegation doctrine as has been spelled out by the court over a long period of time, Congress does have the power to delegate authority to the President. And we, I think, dotted every I and crossed every T with regard to that delegation doctrine, and we very clearly limited the ability of the President to act in this area because we thought we needed to limit it in light of the delegation doctrine. So my sense is that I think

we did as much as we could possibly do to ensure that this thing would survive a constitutional challenge.

Mr. DREIER. One of the most interesting things to me is the fact that those of us who ended up being supportive of the line item veto did so because of the fact that we had accumulated a multitrillion dollar national debt. We had $200 billion to $300 billion deficits as far as the eye could see, and the line item veto was supported in large part out of frustration, frustration over the fact that while we tried for years, those of us who served so long in the Minority to get some sort of handle on this behemoth, we now seem to have turned that corner, and I wonder if some people may feel, gosh, I don't know if the line item veto is necessary now that we are dealing with what my friend Larry Cutler calls surplus politics.

Mr. CLINGER. Well, obviously, I think as the Chairman has pointed out earlier, we have not achieved the kind of savings that a lot of us might have hoped would come out of this process. I think there is still the potential there to achieve a lot greater savings than we have accomplished so far. I think the fact that it may not be as essential at this point does not obviate the need for having it in place, to have it there as a tool. We are not always going to be in surplus. I hope that we would be, but I think inevitably we are going to be—

Mr. DREIER. As long as we are in the Majority, we will be.

Mr. CLINGER. Of course. During these halcyon days I think we will ensure that, but it may not always last. And I think that even though you may not make as much use of the technique, it should be there. In addition, we will have the chance to look at this legislation and refine it because it is going to sunset by the year 2004, and we will have another chance to review it at that time.

Mr. DREIER. Thanks very much again. You are sorely missed around here. Hope you had a nice time.

Mr. CLINGER. Thank you. I miss all of you. I don't miss some of the other things.

Mr. GOSS. Again, I agree with the accountability and the bias toward less spending are valuable, but I wanted to make sure that we didn't miss any opportunity to ask you if you had found anything that had come up that had surprised you or may affect the Supreme Court decision, which again is not in our area of jurisdiction, but it is in our area of interest, with regard to the mandatory spending or the limited tax benefits piece which was really more complicated.

Mr. CLINGER. Much more complicated and clearly the more contentious pieces. As you know, it was felt that we needed to include those pieces in order to be equitable. We could not expect appropriators to bear the full brunt of this; that there needed to be a recognition that the taxers and others needed to be a part of the process.

I think that we had one test where the President overreached in that area, and it was called on. We do have a mechanism to hopefully ensure that the provisions, the tax provisions at least, are qualified because recommendations of the Joint Committee on Taxation are used to determine what is appropriate and what is not appropriate in terms of the tax expenditure.

So again, we have not thus far fully tested those elements, and I think they will be tested in the future. But I think we can defend the inclusion of those certainly on the grounds that we are talking about overall government spending and how we can make savings, and you can't do that just through appropriations. You have to do it through entitlements, and you have to do it through taxes as well.

Mr. GOSS. Nothing has changed my mind about it, and apparently nothing has changed yours.

Mr. CLINGER. Nothing has changed mine. The year that I have observed it proved out that we did a decent job.

Mr. GOSS. Thank you very much. We welcome you back to the United States and are very grateful for your testimony.

Mr. GOSS. The next witness is Dr. Philip Joyce, assistant professor of public administration, the Maxwell School of Citizenship and Public Affairs in Syracuse, and senior research assistant for the Maxwell School's, Alan K. Campbell Public Affairs Institute. Dr. Joyce has more than 12 years of service to State and national government, the last 5 of which was spent analyzing budget process reform issues for the United States Congressional Budget Office.

We welcome you here and look forward to your testimony. We have received written testimony, which we will include in the record, and look forward to your statements today.

STATEMENT OF PHILIP G. JOYCE, ASSISTANT PROFESSOR, DEPARTMENT OF PUBLIC ADMINISTRATION, MAXWELL SCHOOL OF CITIZENSHIP AND PUBLIC AFFAIRS, SYRACUSE UNIVERSITY

Mr. JOYCE. Thank you very much, Chairman Goss, Representative Dreier, members of the committee. I guess there aren't any other Members of the subcommittee at present.

Mr. GOSS. Mr. Frost is here.

Mr. DREIER. They are here in spirit.

Mr. JOYCE. I am happy to appear before you today to discuss the Line Item Veto Act. I will briefly summarize my testimony for the record and would be happy then to answer any questions that you have.

I basically have three things to tell the committee today. The first is that the Line Item Veto Act in the first year has had virtually no effect on spending and the deficit. While the Federal budget outlook over the next 10 years is quite rosy, we cannot credit the Line Item Veto Act with much of this so far. This is in large part because the President was quite restrained in his use of the new power in the first year, and you have already heard from CBO their testimony that the overall effect of the President's cancellations on the budget was quite small. I have nothing useful to add to that except to say that I agree with Dr. O'Neill.

One additional point I could make is that I have always believed that the primary effect of the Line Item Veto Act is on the composition of spending rather than on the overall level. That is, the level of spending could be the same, but you could still believe that there are particular projects that, because of the Line Item Veto Act, are not ultimately enacted into law because the Congress cannot muster enough votes to overcome the President's cancellations. So I

think we have to look at both the overall level of spending and also the composition of spending, which is really the question of pork barrel spending, although pork barrel spending is notoriously hard to define.

The second point I would make is that I also believe that the procedures for Presidential use of the new authority and the congressional response to that use worked generally as expected in the first year. That is, the President used the authority to cancel projects that he believed were not in the broad national interest, and certainly there were some who argued that he should have gone even further than he did, most notably Senator McCain. But in the one case where the Congress disagreed most strongly with the President (the military construction bill) the Congress was ultimately able to overcome the cancellations by mustering the necessary two-thirds needed to override his veto of the disapproval bill.

I also think this represents a good example of how the process can work; that is, when I am talking to people about the way this process works, I now have a real example. I can follow the military construction bill all the way through, and I think it really is a good demonstration of how the process was intended to work.

Further, in the only case where the scope of the President's authority was at issue, that is in the FERS cancellation, the President ultimately recanted as a result of the court challenge.

In my view, there may be a couple of reasons that the Congress was able to challenge the President relatively easily on military construction. The first has been widely reported. That is, the administration admitted that it made errors in applying the criteria for projects to be canceled.

There is a second reason that I think may be more significant in the long run. That is, it is my belief that it is relatively easier for the Congress to put together a coalition to oppose a large number of cancellations than a small number simply because they affect so many more congressional districts. While the Congress reportedly added 750 projects to the defense appropriations bill, one can hardly imagine that the President would have prevailed if he had proposed all or even half of those for cancellation. On the other hand, in the few appropriation bills where he only canceled a handful of items, there was not even any effort on the part of the Congress to try to overcome those cancellations.

The other thing I would say is that the Congress has more flexibility to constrain the opportunities for the President to use the item veto authority than has generally been acknowledged. The Congress, in my view, has at least two ways that it can define the President's choices more narrowly. First, it can simply provide the President with fewer line items to veto; that is, either through the appropriation bill itself or by being less specific in committee reports. And you know that the vast majority of the line items that were canceled by the President were found not in the bill itself, but in report language accompanying those bills. This would probably result in such guidance being communicated from the Congress to agencies in other, less formal, ways if the Congress wanted to let the agencies know how it wanted the money to be spent.

Second, the Congress could simply choose to write specific legislation in a way that would prevent the line item veto from being applied to that particular piece of legislation. Such a prohibition would likely occur only in cases where the Congress feels quite strongly about protecting its priorities. But we can imagine that if the Congress truly believed that, for example, Presidential cancellations in the military construction or defense appropriations bill would threaten national security, they might be quite willing to prevent the President from initiating a budget cut that it would take a supermajority of both Houses to undo.

Now, I must say that there is no evidence that the Congress has used either one of these tools in this year, but it remains to be seen how the Congress would respond to a President that they believed would be more aggressive than President Clinton has been so far in using the line item veto. My major point about the way the process has worked in the first year is that I believe that there are significant limits to the amount of power transferred to the President under the Line Item Veto Act, some of which involve the ability of the Congress to move to eventually limit his use of that tool.

The Line Item Veto Act does make the President more powerful, but so long as the Congress is willing to stand up for its priorities, that additional power comes only at the margin.

The third point that I want to make to the committee is that there are various other technical issues that have surfaced during the first year that were not a major part of the debate when the act was passed. I want to talk about two of these. The first has to do with the timetable for the delivery of the President's special message. This timetable, which requires the President within 5 days after signing a bill to propose his items for cancellation, may not provide the executive branch enough time to do a thorough review of appropriation bills.

Of course, we have to think not only in terms of the 5 days that the President has, but the 10 days prior to that that the President has to decide to sign the bill. But even this 15-day period, while it might seem like a lot of time, might not be quite enough, given the fact that, among other things, appropriation bills have a habit of arriving in bunchings, particularly toward the end of the fiscal year.

So one of the things that your committee might consider as time goes on is whether you believe that some of the errors might have been made that have been acknowledged in the executive branch, for example on military construction, because there might not have been enough time for the executive branch to review those bills, particularly given the fact that they have to look into committee reports in order to discover whether there are line items or not.

Second, as Director O'Neill said, there is this question of whether the line item veto continues to be effective if there is no deficit. Until recently this argument would have seemed like something right out of Alice in Wonderland, but the real possibility that there will be no deficit in fiscal 1998 or 1999 means that you may have to wrestle with this issue, and certainly as Director O'Neill said, the President may have to wrestle with this issue. My view is that the answer to this question is not as straightforward as it might

seem. The Line Item Veto Act itself is silent on the matter of what happens if there is no deficit.

I think there are a couple of reasons to believe that the item veto authority may continue to exist, even when there is no consolidated deficit. The first is, and I realize that perhaps my time at CBO may have made me too much of a budget wonk on this point, that reducing the deficit is somewhat of a term of art. That is, it could be interpreted to mean that a given change will have the effect of either increasing revenues or decreasing spending, so that means it may refer to the direction of the effect rather than the existence of a surplus or deficit. I think it is fair to say that the people who drafted this act were not thinking very much about what will happen if we ever reached the days when there would be surpluses as far as the eye could see.

The second thing I think we have to think about is that there is some continuing controversy over what the appropriate measure is for the deficit. While the consolidated deficit, that is the deficit that includes all spending and all revenues, is projected to go away (that is there is projected to be a surplus over the next several years), the on-budget deficit (that is the deficit including the activities of the Postal Service and the Social Security Trust Fund) is projected by both CBO and OMB to continue to exist between now and 2005. If someone like the courts were to determine that that was the appropriate measure, then the question of whether the Line Item Veto Act continued to exist if there was a deficit would seem to be moot.

In conclusion, there was a great deal of rhetoric surrounding the enactment of the Line Item Veto Act. Some proponents thought it might have a major effect on spending and the deficit, or at least on pork barrel spending. Some opponents declared it as a fundamental transfer of the legislative power to the President with the effect of substituting Presidential priorities for congressional ones.

While we must be cautious in drawing any lasting conclusions based on only 1 year of experience, my view is that the first year provides no evidence in support of either of these two extreme positions. It suggests that the Line Item Veto Act provided the President with a tool that he could use at the margin. If the President moves to use it more aggressively, the Congress can limit his opportunities to use his new authority, which presents another constraint on the level at which he can use it.

I thank you very much for your time, and I would be pleased to answer any questions you might have.

Mr. GOSS. Well, I thank you very much Dr. Joyce.

[The statement of Mr. Joyce follows:]

Chairman Goss, Representative Frost, and Members of the Subcommittee, I am pleased to appear before you today to discuss the use of the new authority provided to the President under the Line Item Veto Act. As you are aware, the Act expanded the President's rescission powers previously provided under the Impoundment Control Act of 1974. My testimony today will review what I believe are the major conclusions that we can draw from the use of the new power in the first year.

Clearly there is a continuing controversy over the constitutionality of the new law, and over the implications that giving the President this new authority has for the separation of powers. Since your committee's jurisdiction is limited to the procedural implications of the Act, my testimony will not address these constitutional questions. I think that there are a number of points that can be made concerning the way that the President's expanded authority has affected the budget process. In addition, I think that the experience of the first year has provided some clues concerning possible future effects. My testimony, accordingly, will make the following three broad points:

- On the whole, the President made limited use of the new authority during the first year, and the impact of total cancellations on overall spending and deficits was quite small.

- The procedures for Presidential use of his new authority and Congressional response to that use worked generally as expected in the first year, although I think that there is some chance that the Congress make attempt to constrain the President's choices to a greater extent in the future than occurred in 1997.

- Various other technical issues have surfaced during the first year that were not a major part of the debate when the Act was passed, including the possibility that the President is not permitted to exercise the veto when there is a surplus, and the capacity of the Administration to analyze complex appropriations and other bills in the short time period provided before the President must act.

I will expand on each of these points in the remainder of my testimony.

SPENDING AND DEFICIT EFFECTS

As this subcommittee is well aware, the constitution would need to be amended in order to provide the President with the sort of item veto power that many Governors possess. If it was, the President would have the authority to approve portions of bills to which the line-item veto applies (presumably, appropriation bills) while disapproving others. The Line Item Veto Act was passed as a statutory substitute for a constitutionally-provided item veto. As such, the bill that was signed into law by the President is technically not an item veto at all, but a change in the rescission process that had existed since 1974.

The new process established under the Line Item Veto Act turned the previous rescission process on its head. Under the Impoundment Control Act, the President could propose cancellations of budget authority contained in appropriations acts, but, unless the Congress voted to approve those cancellations within a 45 day period, they did not take effect. Under the Line Item Veto Act, the President is provided the authority to "cancel in whole any dollar amount of discretionary budget authority provided in an appropriation law or *any item of new direct spending or limited tax benefit* contained in any law." If the President chooses to exercise the authority, he is to notify the Congress of the cancellation by special message within five days of the enactment of a signed bill (the new authority does not apply to bills that become law without his signature) including the items which the President is proposing for cancellation. The cancellation is then *automatically effective* unless specifically disapproved through enactment of a new bill (called a "disapproval bill"), which must pass both Houses of Congress within 30 days of session (defined as a day when both Houses are in session). The President then may (and presumably would) exercise the authority granted him under the Constitution to veto that bill, and the veto could only be overridden by a vote of two-thirds of both Houses of Congress. [1]

Thus, there are two important changes that the Line Item Veto Act made concerning the President's power to cancel previously enacted budget legislation. First, it permits the President's proposed cancellations to take effect without further action by the Congress. Second, it permits the President to exercise his cancellation power in limited ways against expansions of direct (mandatory) spending or against "limited tax benefits" (generally provisions of tax bills that affect 100 or fewer taxpayers, as determined by the Joint Committee on Taxation), rather than only against appropriation bills.

The President's proposed cancellations in the first year can be divided into two categories. The first, reflected in the two massive reconciliation bills that the President signed in July, involved direct spending and taxes. The President canceled three provisions—one that would have increased direct spending and two limited tax benefits—in these bills. According to estimates of the Congressional Budget Office, these three cancellations would reduce the 1998 deficit by a total of $225 million.

The President also used his new authority to strike a total of 79 provision in appropriation bills. By far the most vigorous use of the cancellation power was associated with the Military Construction bill, where the President canceled 38 projects, with a total reduction of $287 million in fiscal year 1998 budget authority (this represented approximately 3 percent of the total budget authority provided for in the bill).

He was much more limited in his use of the veto authority for the remainder of the 1998 appropriation bills. Cancellations totaling $190 million in budget authority were proposed for 8 different bills, but the vast majority of these 41 cancellations, at least in

[1] The President is still able to recommend rescissions as he was prior to the passage of the LIVA, but the automatic cancellation provisions do not apply.

dollar terms, were from the Department of Defense appropriation bill (where the President's proposed cancellations totaled $144 million).

In total, the President's 79 cancellations from 9 appropriations bills reduced budget authority by $477 million out of total discretionary budget authority of more than $526 billion provided for in these bills. This means that the President's total cancellations represented less than .1 percent of all discretionary BA provided for in the 13 appropriations bills. As you know, however, the Congress has recently successfully moved to disapprove the President's reductions in the military construction bill. If we reduce the effect of the President's cancellations by the amount included in this bill that was subsequently disapproved by the Congress, the remaining cancellations represent less than .04 percent of all 1998 discretionary budget authority.

The President's use of the line-item veto power, then, had virtually no effect on spending and the deficit. It certainly might have had a greater effect if the President had used the power more aggressively. For example, the Congress reportedly added more than 750 projects, worth more than $11 billion, to the Department of Defense appropriation bill. As noted, however, the President canceled only 14 of those projects, at a total savings of $144 million.

PROCESS WORKED GENERALLY AS EXPECTED IN 1997

The procedures established under the Line Item Veto Act worked for the most part as the Congress seemed to anticipate when it enacted the statute. The President used the authority to identify projects that he believed were not in the broad national interest and (while some have argued he was somewhat restrained in his use of the authority) canceled projects that he believed should not be enacted. In the one case where the Congress disagreed most strongly with the President (in the Military Construction bill), they were ultimately able to overcome his cancellations by mustering the necessary two-thirds needed to override.

This would seem to belie some of the concerns raised by opponents of the Act initially, some of whom seemed to imply that the Congress would be powerless to stop the President from a wholesale substitution of executive priorities for legislative priorities. This certainly did not happen in the case of the President's biggest single set of cancellations. There may have been at least two reasons for this. First, the President acknowledged that mistakes were made by the Defense Department in identifying projects in the MilCon bill which met his criteria for reduction. (The Administration, for example, said that it had not proposed projects for cancellation where design work had already begun, but this proved to be untrue in a number of cases.) This put the Congress on firmer ground politically when opposing him. Second, since a relatively large number of projects were included, it may have been easier for opponents of the Presidents actions to put together the coalitions for override.

The fact that it is easier to put together a coalition to oppose a large number of cancellations in the single bill than it is to put together one in opposition to a smaller number of cancellations suggests that it will be harder for the President to prevail in cases where he uses the power more aggressively. It seems highly unlikely, for example that the President would have prevailed if he had proposed canceling all (or even half) of the 750 add-ons in the Defense bill. To the extent that this is true, it provides limits on the extent to which the President's priorities will be substituted for those of the Congress.

Beyond the limitations that political realities may place on the President's use of his new tool, the Congress has more flexibility to constrain the opportunities for the President to use the item veto authority than has generally been acknowledged. The Congress has at least two ways that it can define the President's choices more narrowly. First, it can write bills so that there are fewer line items. Further, given the special status given to report language and the "all or nothing" choice given to the President, it seems quite likely that an aggressive use of the authority by the President could lead the Congress to be less specific in the guidance given in reports. This would probably result in such guidance being communicated to cabinet agencies in other, less formal, ways. The executive branch has historically complied with directions provided in committee reports, even though they do not have the force of law, because they know that ignoring them may poison future relations between the agency and Congress. They are likely, in my view, to treat the less formal types of instructions with the same respect that they now treat report language. (The "packaging effect" that I have just described, by the way, has been found in academic research on the effect of the line-item veto at the state level.)

Second, the Congress could simply choose to write legislation in such a way that specifically prevents the item veto from being applied to specific pieces of legislation. Such a prohibition would likely occur only in cases where the Congress feels quite strongly about protecting its priorities. This could open the Congress up to charges of hypocrisy, if they appear to be providing the President with item veto authority and then taking it away. It could also result in the President vetoing a bill that attempted to limit his authority (although the "all or nothing" veto has proved to be a rather blunt instrument in the past). The Congress might find itself on firm political ground in opposing particular cuts, however. If the Congress truly believed, for example, that Presidential cancellations in the Military Construction or Defense appropriation bills would threaten national security, they might be quite willing to prevent the President from initiating a budget cut that it would take a supermajority in both houses to undo.

My major point is that I believe that there are significant limits to the amount of power transferred to the President under the LIVA, some of which involve the ability of the Congress to limit his use of the tool. The Congress apparently did not turn to using these limitations much (if at all) in 1997, but I would argue in part that the Congress has not yet confronted a President that they are convinced will use the power aggressively against them. In the vast majority of instances (the exception being Military Construction) they were proved correct.

A final note on the effect of the item veto on the process is that it is important to look beyond the simple incidence of the use of the line-item veto to the more subtle changes that may occur in the behind-the-scenes relations between the President and the Congress. Here there are two main possibilities. First, the threat of the line-item veto could decrease the level of Congressional add-ons; there is no real evidence of this having occurred so far. Second, it could establish opportunities for Presidents to use the threat of a line-item cancellation to bargain for other things. There was some evidence of this presented in press accounts this year (most notably associated with the President's effort to get votes for his fast track authority), but no real evidence of wholesale shifts in the ability of the President to get what he wanted (while the President may have attempted to use the threat of cancellations for leverage on fast track, he did not prevail on the vote). The limitations here are the same as those cited previously. If the President is too aggressive, he gives the Congress incentives to narrow his ability to apply the tool.

OTHER TECHNICAL ISSUES RAISED IN THE FIRST YEAR

In addition to the extent of the President's use of the item veto, and the effect of its use on the interactions between the President and the Congress in the budget process, there are a number of technical concerns that the Committee might focus its attention on. Two of these seem particularly relevant. The first is the extent to which the timetable for the delivery of the President's "special message" may not provide adequate time for the executive branch (and particularly the Office of Management and Budget) to review bills prior to Presidential action. The second is the possibility that the President's item veto power ceases to be effective in years in which there is no budget deficit.

Burden on OMB to Review Legislation

The Line Item Veto Act requires the President to present his "special message", proposing cancellations of items included in a particular bill, within five days after signing that bill. Since the President has 10 days after receipt of the bill prior to taking action on that bill, this means that the White House may have up to 15 days to analyze those bills for which cancellations may be proposed. OMB also has advance knowledge of likely conflicts by closely monitoring a bill while it is in conference committee. This may seem like sufficient time, but there are several reasons to believe that more time might be required for a thorough review:

- Appropriation bills have a habit of arriving in bunches, particularly near the end of the fiscal year;
- A decision concerning what action to take on a particular bill is liable to involve a number of people in the executive branch, from the White House staff, to OMB, to the affected agency; such consultation can be time-consuming.

- Because the definition of a "line item" in the legislation forces the executive branch to review a number of different sources (not the least of which are committee reports, where 75 of the 82 vetoed items were found in 1997) to search for items to veto, a detailed review process is necessary for each appropriation bill.

This suggests that the Congress might consider whether the amount of time provided to the President to review bills is sufficient, or whether more time (for example, ten days instead of five) would be appropriate.

Does the President's Power Cease to Be Effective if There is No Deficit?

The President, in transmitting his special message proposing cancellations, must certify that each cancellation will "reduce the Federal budget deficit". This has led some to conclude that the President's cancellation authority is not available unless there is a deficit. Until recently, this argument would have seemed like something right out of Alice in Wonderland, but the very real possibility that there will be no deficit in fiscal year 1998 or 1999 means that the President, the Congress, and perhaps eventually the courts may have to wrestle with this issue.

The answer to this question is not as straightforward as it might seem. The Line Item Veto Act is silent on the matter of what happens if there is no deficit. In fact, I doubt that it would overstate the case to say that the drafters of the Act did not lose much sleep over the "problem" of what to do if there was no deficit.

While I acknowledge the ambiguity, and I would not pretend to predict whether the courts would agree with me, there are two reasons, in my view, to believe that the item veto authority may continue to exist even when there is no consolidated deficit (that is, a deficit resulting from calculating the difference between all receipts and all outlays of the federal government). First, the term "reducing the deficit" is a term of art. I interpret is to mean, based on past application by OMB and CBO, that a given change will have the effect of either increasing revenues or decreasing spending. Thus, it is intended to speak to the direction of the effect, not the existence of a surplus or deficit.

Second, even if one were to subscribe to the notion that the Act was null and void if there was a surplus, it is not at all clear that the appropriate surplus is necessarily the consolidated surplus, rather than the "on-budget" surplus (which excludes the activities of the Social Security trust funds and the activities of the Postal Service). Since both OMB and CBO continue to project that there will be "on-budget" deficits between now and 2005, under this measure the question of what occurs to the line-item veto power in a year when there is a surplus is a moot one.

CONCLUSION

There was a great deal of rhetoric surrounding the enactment of the Line Item Veto Act. Proponents thought that it might have a major effect of spending and the deficit, or at least on pork barrel spending. Opponents decried it as an unwise transfer of the fundamental legislative power to the President, with the ultimate effect of substituting Presidential priorities for Congressional ones. While we must be cautious in drawing any lasting conclusions based on only one year of experience, my view is that the first year provides no evidence in support of either of these two extreme positions. It suggests that the Line Item Veto Act provided the President with a tool that he could use at the margin to cut some initiatives (although some, such as Senator McCain, have said not enough) that he felt represented a particularly egregious pursuit of narrow interest. On the other hand, there are limits to this power, including an ability of the Congress to use the flexibility provided to them under the Act to constrain the extent to which the President can use his new authority.

Mr. GOSS. Those are good observations. And I think your technical observations about the timetable with the bunching of the appropriations bills is a very valid observation and something that we had thought about and had not come to any conclusion on. It is very hard to foresee how many things can go wrong in government, and I label that in that category, but it is an area that we have to watch.

With regard to the surplus question, I tend to respond very favorably to the hypothesis that you have offered that the Court or somebody else might conclude that even though we might technically have a surplus, as the Budgeteer called it a surplus relative to the ways we do business, we really don't have a surplus when we have got a $5.6 trillion national debt which we are supposed to be paying down. I realize only the interest on that comes into the budget, but I am not sure the interest and debt service shouldn't go into that with some kind of a payoff schedule.

But more important, the Social Security question makes that argument secondary because the Social Security question is real, how you deal with reserves. And as we know from some of the work done by the Kerry Commission and the unsustainable trends charts that we have got out there, it isn't just Social Security, we really are not looking at surplus as far as the eye can see, true surpluses. We are still looking at obligations on the American taxpayer and other revenue sources from the Federal Government that are going to have to be carefully watched in the future.

I don't think the need for the—the underlying need for accountability is ever going to go away. If anything, I would argue that we always need more accountability. And I also just tend to believe it is human nature, and in a few years, in Washington the past decade, and a few years in Washington in the 1960s, it seems to me that the tendency in Washington is to try to rush in and create something and therefore create an expenditure rather than to do the other, which is to stop something and not create an expenditure, but, in fact, create a savings. That just doesn't happen very often.

So I think we do need tools to create savings. And although that is a stretch for what the line item veto is, I certainly think it is fair to say that it is a tool that at least may be a tool to use to brake spending, put a brake on spending.

Mr. JOYCE. If I could respond, Mr. Chairman, it seems to me that as long as you believe that the line item veto is primarily a tool that is trying to get at particular kinds of spending, that is spending that would not be enacted if it had to see very much of the light of day, then that question is really not related to the size of the budget or even the size of the deficit. I think, that the line item veto is intended to make it harder to enact particular kinds of spending without regard to whether there is a surplus or deficit, so it seems to me that it is perfectly consistent to say that there could be a surplus, and you could also believe that the line item veto was a reasonable tool to use.

Mr. GOSS. I would agree with that. And in your area of your opening observations about the composition of the mix rather than the level of spending, I would hope that the bias is towards reduc-

ing the level. And I think that there is evidence to that effect, but I think it is way too early to tell, and I don't draw any firm conclusions either.

Doc Hastings has joined us.

Mr. HASTINGS. I apologize for coming in late, but the last part of your testimony when you were talking about—and I hope I didn't misinterpret you—whether the line item veto was valid if there is a surplus, boy, as one Member, I had not heard that argument, but I come from a State where the Governor has broad range of line item veto. In fact, one Governor from Washington even went down and was taking individual words out of sentences that didn't deal with budget matters. And I am a supporter, by the way, of the line item veto.

My question to you, then, if there is some gray area on there, and I would certainly be one Member that would say that the President ought to have the authority, whether there is a surplus or not, we do, we need to have some language, something to clear that up if that needs to be done. Is it that gray?

Mr. JOYCE. Well, I think it may be that gray in the sense that now I believe as the law is written, it would really be up to the President to decide whether he believed that he did not have that authority because there happened to be a surplus.

The controversy arises out of the fact that one of the things that the President is required to do when he sends his cancellations forward is to certify that the cancellation will reduce the Federal budget deficit. So the question then is if there is no Federal budget deficit, can the President move forward with those cancellations anyway?

Now, my own view, as I said, is that the term "reducing the deficit" is somewhat of a term of art, and that we face the real possibility that the courts may be asked to step in and decide what the real Federal deficit is, which, of course, is something that people have been arguing about for some time. So I think clearly if the Congress moved forward to say specifically that the line item veto continues to be applicable, whether there is a deficit or is not a deficit, that would clear the matter up.

There is ambiguity because the act is silent on the question of whether there is an item veto if there is or is not a deficit, except for this one section that requires the President to certify that a particular item veto will reduce the deficit. This raises the question of what deficit are you talking about and what is the meaning of "reducing the deficit." And I think some would consider it to be the effect of either increasing revenues or decreasing spending.

Mr. HASTINGS. Going through this process, maybe I shouldn't be asking you, why was that phrase put in there?

Mr. JOYCE. I think it was put in there basically in conjunction with the lockbox provision, because the point was that people didn't want that money to be freed up to be spent on other purposes. They wanted it instead to be used to reduce the deficit, which was a perfectly reasonable thing to say in the context in which we were dealing at that time.

The fact is—you perhaps can tell me whether I am right or not—but it strikes me that it is probable that the people who were drafting this legislation did not think about the possibility that there

might be surpluses over a number of years because that was something—that was a world we were not at that point living in. So I think it was not intentional. Nobody intended that the power would go away if there ceased to be a deficit. People just probably didn't think about a time coming when there would be no deficit.

Mr. HASTINGS. So, therefore, your recommendation would be that if we think that it was the intent of Congress that the line item veto should be applicable regardless, that we do need to clear up that definition then?

Mr. JOYCE. I would think that would be the cleanest thing to do if you don't want the courts to interpret it.

Mr. HASTINGS. That is probably better if we were to do that.

In this decision is the Court looking at that specific problem?

Mr. JOYCE. I don't believe so. I think that the Court is dealing in a much more global plane. And if the Court upholds the district court decision, then obviously this question is moot.

Mr. HASTINGS. Thanks.

Mr. GOSS. Two points further briefly. One, you testified that you felt there may be a way that Congress could in your words simply choose to write legislation in such a way this specifically prevents the line item veto from being applied to specific pieces of legislation. Would you share with us a "for instance"?

Mr. JOYCE. Well, the Congress could, in putting together a particular spending bill, write language in that spending bill that says, the provisions of Public Law such-and-such shall not apply to this particular piece of legislation.

Now, the President then would be faced with the question, does he want to veto the entire military construction appropriation bill because he doesn't like that language? But as we know, the overall veto is somewhat of a blunt instrument. He might do that or might not.

Mr. GOSS. He would create another veto override situation that would take place on that prohibition.

Mr. JOYCE. Yes, if he decided to veto the bill.

Mr. GOSS. Whether the Congress has retained for itself in the law as we wrote it the essence of our budgetary prerogatives, that is my other question.

Mr. JOYCE. I think so. And I think the main reason for that is the point I raised in my testimony, not only the point about the ability of the Congress to move and constrain the President's choices more narrowly, which I think the Congress could clearly do and has not done so far, but I think there are limits in a given appropriation bill to how far the President can go. So I think at the margin, the President has more power than he used to. But I think if the President decided that he wanted to cancel hundreds of congressional add-ons in a particular bill, now you are affecting a whole lot of different congressional districts, and it makes it a lot easier for the Congress to put together a coalition to overcome that. So I think there is a structural limit.

I would never argue that the President has not been given more power at the margin, and I think that the President can impose himself more directly perhaps into the legislative process at an earlier stage by—I will use the word threatening, but I probably don't mean to—to cancel a particular project in exchange for a Member

supporting him on a particular priority. But I think that is again more or less at the margin.

Mr. GOSS. I have been very concerned about watching the scorecard—that argument about political blackmail, to use the term—and I have not heard any strong evidence or anything that I would regard as serious in that area.

The other side that we have heard so far you have hit on, this is the 5-day question, is sort of the level of competent review in the time period by the White House staff and the advice that the President gets. And I think where the goofs came in the White House this year, and, of course, we have not had testimony directly before our subcommittee on this, although there has been some testimony in Congress, where the goofs came and why they came is something that I think we need to know about.

I think you have highlighted an area that we are going to receive more information on. I thank you very much for making yourself available and giving us good advice and information.

At this time Dr. John Berthoud, and Dr. Stephen Moore, and—I guess Mr. Schatz is not here. We are pleased that you have come to see us.

Dr. Berthoud is president of the National Taxpayers Union, and we welcome your input on this as a member of our panel. And Mr. Steven Moore is the director of fiscal policy of Cato. We are hoping that Mr. Tom Schatz, who is president of Citizens Against Government Waste, would also appear, but in his absence we will proceed anyway.

Mr. GOSS. Dr. Berthoud, I think you got in the first seat first, so we will begin with you. We will accept all submitted testimony for the record and welcome you.

STATEMENTS OF JOHN BERTHOUD, PRESIDENT, NATIONAL TAXPAYERS UNION; TOM SCHATZ, PRESIDENT, CITIZENS AGAINST GOVERNMENT WASTE; AND STEPHEN MOORE, DIRECTOR, FISCAL POLICY, CATO INSTITUTE

STATEMENT OF JOHN BERTHOUD

Mr. BERTHOUD. I will keep my remarks brief.

Thank you, Mr. Chairman, for holding this important hearing. It is a pleasure to be with you and my friend Steve Moore to talk about this important issue.

As you indicated, I am President of the National Taxpayers Union, a nationwide grassroots organization of taxpayers, with 300,000 members. I will share our views and the views of our members on this very important issue.

We have long supported the line item veto and other structural mechanisms that we believe will reduce the budget process's built-in biases toward higher spending. We continue to strongly support the line item veto and hope that the tool will ultimately survive court challenges and provide the President and taxpayers with a weapon against pork barrel spending.

In its first year, which is the focus of this morning's discussion, we think the line item veto has worked relatively well. Unlike some critics of the legislation, our main criticism would be that it has not been used enough. Dr. O'Neill pointed out the CBO estimate of

only $355 million in fiscal year 1998, and that certainly is evidence that, if anything, we are disappointed that it has not been used more.

Some Members and some other observers have cried foul and claimed that the President has politicized this tool. I would simply quote Senator McCain in our view that the whole public policy process is fraught with politics. This is a tool that you, Mr. Chairman, and others, I think, designed to try and exercise some politics from the process. From the budget process, Senator McCain argues that, "Many arguments have been mentioned as compelling reasons to restore this funding." This is in the context of the military construction override vote. "Sadly, most of these arguments seem to be thinly veiled attempts to provide a rationale for Congress' self-serving pork-barrel spending. Some of my colleagues have argued that the President's use of the line item veto to eliminate these unrequested low-priority military construction projects was politically motivated. These arguments conveniently ignore the possible political motivations of the Members of Congress who added these projects."

Some discussion has been given to the State experience with the line item veto. Currently 41 States—and that can vary a little bit depending on how you count—but 41 States, I think the experience generally has been positive and certainly argues against political abuse.

Governors and State legislators alike support the line item veto. Certainly, the good work of Steve in the 1992 survey of Governors indicated there was strong support. In fact, 92 percent of Governors surveyed said—sorry if I am stealing your thunder, Steve—it was useful, and 7 percent said it was not useful. And Democrats were as almost likely as Republicans to indicate it was a useful tool.

State legislators have indicated they find it useful too. The American Legislative Exchange Council, one of the largest organizations of State legislators with 2,500 members nationwide, strongly supports the line item veto, and I think that would be an indication that State legislators, who have had experience of possible political abuse, nonetheless support the idea, and I think that should provide some comfort to this body.

Finally, certainly some of the discussion this morning has focused on accountability. We believe that the line item veto does make the President more accountable. We have seen some evidence of this during the first year. We believe that in the absence of a line item veto, it is quite easy for the President to condemn Congress for wasteful spending. And since Presidents in this case would have no tools to address the problem, the responsibility stops at rhetoric. What we would like to see, as we indicated, is President Clinton go much further in the use of the line item veto. It has forced the Presidential hand. Action has replaced mere words.

We clearly believe—there has been some discussion of the happy circumstance we find ourselves in of surplus politics. We nonetheless believe very strongly that there is a continuing need for the line item veto. Currently there are many proclamations of fiscal conservatism, which might lead some to believe that we no longer need this tool. I would certainly argue the opposite is the case.

First, despite some claims by the President and others that the era of big government is over, Federal spending is at record heights. In 1969, the last year in which we balanced the budget, for the nondefense functions of the Federal Government, we spent about $10.70 out of every hundred dollars in gross domestic product. This year that will rise to $17.30, and I provided a table in my testimony that indicates the rise in overall Federal spending, and this is adjusting for inflation. When you compare it to 1969, 30 years ago when we last balanced the budget, it is 107 percent higher than that figure in 1969. And again, thats adjusting for inflation.

So, certainly, there seems to me, and seems to the National Taxpayers Union, two issues. While the line item veto is important for deficit reduction purposes—and I think you have indicated this Mr. Chairman—there is an important need for spending reduction per se. And I think even in surplus times, it is important for spending reduction to occur.

We do not believe—I would certainly concur with Dr. O'Neill and some of the other testimony this morning—the line item veto is going to be a tool that is going to make a huge dent, but we do think it is an effective tool, one of many tools we would recommend as structural mechanisms to assist in the reduction of what we believe is government that has grown too large.

Certainly the entitlement issue is one that is of grave concern, and certainly we have focused much of our time and attention on that. But nonetheless, while that may be the most pressing issue, certainly pork barrel spending, which is the primary focus of the line item veto, remains a problem. So we believe that that is something, another argument in favor of it.

I would cite work done by our (c)(3) foundation, 501(c)(3) foundation, the National Taxpayers Union Foundation. We have a Billtally system which looks at the legislation introduced by the Members of Congress, and the indications that we have seen are that in the 105th Congress, many Members have begun to propose increases in spending. The number of spending cut bills, we have found in our study, during the first 6 months of this year was less than half the total in the first 6 months of 1995. There were more spending increase bills, 440, than the first 6 months of 1995. And far fewer Members of Congress, I am sad to report, had net legislative agendas to cut the size of government than in the 104th Congress. So certainly we see in the research of our foundation pressures to spend in the Congress, which, again, gives us an indication that the line item veto continues to be needed.

Mr. Chairman, I would be happy to answer any questions that you might have or any opinions that we have on the court challenges, but I have some discussion of that in my testimony, which I will leave for the record.

In conclusion, the National Taxpayers Union sees government is far too large and intrusive in the lives of Americans. We seek any and all means to limit the size and scope of Washington's reach. The President's ability to veto individual items in mammoth spending bills is an important tool to rein in the Federal Government, and we would have liked to have seen it used more during this first year, but we believe that the line item veto has proven to be a use-

ful and responsible part of the Federal budget process. We hope that the Supreme Court will ratify the constitutionality of the line item veto and this Congress will put aside parochial concerns and will support this tool which benefits the Nation at large. It should be a permanent part of the Federal budgetary process.

Mr. GOSS. Thank you very much.

[The statement of Mr. Berthoud follows:]

Statement of John E. Berthoud, Ph.D.
President of the National Taxpayers Union

before the
U.S. House of Representatives
Committee on Rules
Subcommittee on Legislative & Budget Process

on the
Line Item Veto

March 11, 1998

I. Introduction

Mr. Chairman and Members of the Subcommittee, my name is John Berthoud. I am President of the National Taxpayers Union, a nationwide grassroots lobbying organization of taxpayers with 300,000 members.

I come before you today to state our views on the federal government's initial experience with the line item veto. The National Taxpayers Union has long supported the line item veto and other structural mechanisms that reduce the budget process's built-in biases towards higher spending. We continue to strongly support the line item veto and hope that the tool will ultimately survive court challenges to provide the President – and taxpayers – with a weapon against pork-barrel spending.

II. The Line Item Veto in The First Year

Overall, we think the line item veto law worked reasonably well in the first year. However, unlike some Congressional critics, our main criticism would be that it wasn't used enough.

Some Members of Congress who have not liked the policy decisions made in several of the President's line item vetoes have called foul. They have argued that politics has driven the President's decisions. While politics is inevitably wrapped up in all public policy decisions, we see far more politics driving the inclusion of much of the pork-barrel spending that the line item veto weeds out. Senator John McCain (R-AZ) made this same argument recently in the context of a debate over one of the President's line item vetoes:

108 North Alfred Street, Alexandria, VA 22314 ▼ Telephone 703-683-5700 ▼ Fax 703-683-5722

> [M]any arguments have been mentioned as compelling reasons to restore this funding. Sadly, most of these arguments seem to be thinly veiled attempts to provide a convenient rationale for Congress' self-serving, pork-barrel spending.
>
> Some of my colleagues have argued that the President's use of the line-item veto to eliminate these unrequested, low-priority military construction projects was politically motivated. These arguments conveniently ignore the possible political motivations of the Members of Congress who added these projects.[1]

The evidence from the 41 states with some type of line item veto[2] further refutes the claims of those who have argued it is a weapon of political abuse. After years of experience, governors and state legislators alike support this tool for their states. A 1992 survey by the Cato Institute of 118 governors and former governors (including Jimmy Carter, Ronald Reagan, Michael Dukakis and Bill Clinton) found strong support among state chief executives for a federal line item veto. When the governors were asked whether or not the line item veto was a useful tool in balancing the state budget, 92 percent said it was very useful or somewhat useful and only 7 percent said it was not useful. Democrats were almost as likely as Republicans to believe that the line item veto was useful. State legislators also support this tool. The American Legislative Exchange Council – a nationwide membership organization of 2,500 state legislators – has officially endorsed the idea of a line item veto because of its fiscal benefits.

For better or worse, we will never rid the public policy process of politics. But the line item veto on net reduces the element of politics in budgetary decision-making. We believe that this has been the case in the first year of the federal line item veto.

Finally, we would point out that the line item veto makes Presidents more accountable. We believe we have seen some evidence of this during the first year of the process. In the absence of a line item veto, it is quite easy for Presidents to condemn Congress for wasteful spending. Since Presidents have no tools to address the problem, their responsibility stops at rhetoric. While we would have liked to see President Clinton go much further in his use of the line item veto, it has forced the Presidential hand. Action has replaced mere words.

III. The Continuing Need for the Line Item Veto

While there are today many, many proclamations of fiscal conservatism in the halls of Congress, it is nonetheless clear that far greater fiscal restraint is needed. Let me offer some evidence on this point.

First, despite claims that "the era of big government is over," federal spending is actually at record heights. Non-defense federal spending is – by almost any measure – the highest it has ever

been. In 1969 (the last year in which we balanced the budget), for the non-defense functions of the federal government, we spent $10.70 out of every $100 in Gross Domestic Product. This year, we'll spend $17.30. The table below shows that in real terms, total federal spending in 1999 is projected to be *over 107% more* than just thirty years ago.

Total Federal Government Outlays: 1969, 1979, 1989 & 1999 (In Constant 1992 Dollars)	
Year	Outlays
1969	$707.1 billion
1979	$957.3 billion
1989	$1,284.9 billion
1999	$1,466.1 billion
Change 1969-1999	107.34%
Source: Historical Table 1.3, The President's FY 1999 Budget.	

This huge rise in spending has been paid for by repeated tax hikes during the 1980s, in 1990, and again in 1993. The so-called "Taxpayer Relief Act of 1997" repealed only a tiny fraction of those previous increases – about one penny on every tax dollar that we send to Washington.[3]

Second, while entitlement reform is the biggest challenge facing Congress and taxpayers, it is clear that there is a massive amount of waste in discretionary spending. Much of this waste comes about from Congressional parochialism – which is the target of the line item veto.

Earlier this week, the National Taxpayers Union, as part of a coalition,[4] sent a letter to Capitol Hill pushing for new rounds of military base closings. Excess military bases are estimated to cost American taxpayers nearly $5.6 billion each year. This type of parochialism not only costs taxpayers, but it means that what dollars that the government is spending are not being spent on the highest priority items. In another example, the largest committee in the House, the Transportation Committee, is currently in the process of larding a huge new spending bill with more than 1,100 pork-barrel projects.

This continued Congressional proclivity towards spending is demonstrated in research by our 501(c)(3) affiliate, the National Taxpayers Union Foundation (NTUF). NTUF's *BillTally* system tracks the costs (or savings) of every piece of legislation in Congress. These estimates of the fiscal impact of legislation are cross-indexed with Members' sponsorship records to derive a figure on the legislative agenda of every Senator and Representative in Congress. Our first study of the 105th Congress showed that during the first six months of this Congress:

- The number of spending cut bills was less than half the total of the first half of 1995
- There were more spending increase bills (440) than in the first six months of 1995 (394)
- Far fewer Members of Congress had net legislative agendas to cut the size of government than in the 104th Congress

While the language of fiscal restraint has been adopted by great numbers of elected officials, unfortunately, all too often the practice of pork barrel politics has continued. Thus, the line item veto is still vitally needed by American taxpayers.

IV. Constitutional Challenge

On February 12th of this year, U.S. District Judge Thomas Hogan ruled that the line item veto law violates the doctrine of balance of power between the branches of government. Hogan argued that the Constitution cannot be contorted because of Congress's inability "to control its voracious appetite for pork." We would take sharp issue with Hogan's reasoning.

First, we believe there is precedent that establishes that while other branches may not take authority from Congress, the Congress may delegate that authority. For years, Congress has allowed the Executive Branch broad regulatory latitude which has imposed significant burdens on taxpayers. It is ironic that only now does the court speak out, when taxpayers have a tool that could work for them instead of against them.

But more to the point, the Congress has the final say on spending under the line item veto. This was amply demonstrated in February of this year when the Congress (wrongly we believe) overrode the President's line item veto of 38 military construction projects worth $287 million. Again, I cite Senator McCain:

> I would like to point out that the exercise we are completing today was set up in the Line Item Veto Act to ensure that Congress has the last word in determining how federal funds are spent. While I disagree with the expected outcome of the Senate's action on this veto override bill, I believe it supports the Constitutionality of the Line Item Veto by demonstrating that the prerogatives of Congress to control the government's purse strings are protected in the law.[5]

The Supreme Court will review Judge Hogan's ruling. The issue has been put on a "fast-track": oral arguments are scheduled for next month and we will almost certainly have a ruling later this year.

V. Conclusion

The National Taxpayers Union sees government as far too large and intrusive in the lives of Americans. We seek any and all means to limit the size and scope of Washington's reach. The President's ability to veto individual items in mammoth spending bills is an important tool in the fight to reign in the federal government. While we would have liked to see it used more, we believe that the line item veto has been a useful and responsible part of the federal budgeting process during its first year of existence.

We hope the Supreme Court of the United States will ultimately ratify the constitutionality of the line item veto and that this Congress will put aside parochial concerns and voice support for this tool which clearly benefits the nation at large. The line item veto can and should be a permanent part of the federal budget process.

Thank you.

Endnotes

1. Statement of Senator John McCain on the Military Construction Line Item Veto Override Bill, February 25, 1998.

2. *The Book of the States*, 1996-1997 (Lexington, KY: The Council of State Governments), Table 6.3.

3. By our calculations, if we rolled back the growth in non-defense federal spending since 1969, every family – not a select few as under proposals for targeted relief – would reap huge benefits. Under this scenario, a family of four could keep *almost $9,000* more of what it earns – this year and every year to come. See John Berthoud, "A Bloated, Balanced Budget," *The Journal of Commerce*, February 19, 1998, Page 7A.

4. The Coalition's other members are: Business Executives for National Security, Citizens Against Government Waste, the National Tax Limitation Committee, and Taxpayers for Common Sense.

5. Statement of Senator John McCain on the Military Construction Line Item Veto Override Bill, February 25, 1998.

Mr. GOSS. Let the record show that we have been joined by Mr. Tom Schatz. And we will go to Stephen Moore and then Mr. Schatz, and then we will do the questions afterward.

STATEMENT OF STEPHEN MOORE

Mr. MOORE. Thank you, Mr. Chairman. It is a privilege to testify before this committee. In order to comply with the truth in testimony laws, let me indicate that neither I nor the Cato Institute receive any government funds from the Federal Government, nor have we ever.

I am gratified for the opportunity to testify on this line item veto issue. It is the fourth time that I have testified, dating back to the early 1980s. The reason I am gratified is that I think that the last 15 years or so we have talked about what we thought would be the impact of the line item veto, and now we do have some evidence. And I am gratified because I think I would agree with Mr. John Berthoud that the evidence suggests that this tool is working; maybe not quite as well as you or I would like to see it work, but on balance I think the evidence is fairly strong that the line item veto is doing exactly what taxpayer advocates hoped that it would do.

Let me just summarize my testimony. Four quick points. First, the line item veto has worked to reduce wasteful spending. If you look over the first 5 years, that is if you look at the line item vetoes that President Clinton made this year, there were 82 line item vetoes and 11 spending bills, and the estimates are that that will save $2 billion over 5 years. I agree with John Berthoud that I would have liked to have seen the line item veto used quite a bit more than that, but I think we are off to a good start.

Some of the types of projects that were line-item-vetoed by President Clinton included just some absurd projects that are the kinds of things that—reasons that taxpayers demanded it in the first place: a $600,000 solar aquatic wastewater treatment demonstration project in Vermont; $2 million Chena River dredging project in Fairbanks, Alaska to benefit one tour boat operator; $1 million corporate welfare grant to the Carter County, Montana, Chamber of Commerce. Those are exactly the kinds of projects that we hoped would be line-item-vetoed.

Point number two was the question of has the President abused the line item veto. I do not think that there is any evidence that this power has been abused. This is not to say that President Clinton's use of the veto has been exemplary. I think that I would agree with some congressional critics of the line item veto who said that this administration has failed to provide any coherent justification for why some projects were line-item-vetoed and others were not, and I think that is a fair criticism. And I would urge the administration to set down a series of criteria to Congress to say, here is why certain projects will be line-item-vetoed and others will not. I think if he did so, this charge that it is being used capriciously would go away.

I am convinced, Mr. Chairman, that if we had a President who really aggressively used the line item veto, and searched out waste in the budget, and I put in my appendix just a list of about 40 or

50 projects that my cursory examination of the appropriations bills I thought deserved to be line-item-vetoed, but if we had a President like a Ronald Reagan in the White House, I think it is very clear that we could see this line item veto being used to save anywhere from $2 billion to $5 billion a year, which is a significant level of savings.

The third issue, which I think is an important one and an issue that has come up a lot over the years about the line item veto, is this issue of whether this gives too much power of the purse to the White House. And I want to say that I am not a lawyer or a constitutional scholar, so I have no opinion as to the legality of this particular line item veto legislation enacted in the 104th Congress, but what I will say is that I believe that even with enactment of this line item veto, that we ought to keep in mind that the President has less power of the purse today than he has throughout most of the last 200 years. The line item veto does not involve a huge and unprecedented power shift in the direction of the White House. The line item veto should be more accurately thought of as a relatively weak and partial restoration of the rightful budgetary powers of the President that were stripped away from the executive branch by the 1974 Budget Act, which was one of the worst pieces of legislation that we passed in the last 30 years.

The Budget Act stripped the President of his right to impound funds, a power that was exercised routinely by every President from Thomas Jefferson through Richard Nixon. Thomas Jefferson first employed this power and refused to spend appropriated funds in 1801 when he impounded $50,000 for Navy gunboats.

This was an extremely powerful White House authority that was exercised often for 200 years of our history. Presidents Kennedy, Johnson and Nixon used the impoundment power routinely and in some years used the power to cut Federal appropriations by 5 percent, a huge amount of savings. In 1 year Richard Nixon impounded 7 percent of appropriations. Franklin Roosevelt used the power to cut 10 percent from domestic appropriations during the war years.

The point I am trying to make is that the line item veto is only a partial restoration of the rightful authority of the executive branch that was taken away, I think inappropriately, in 1974.

One final point: the issue of what should Congress do if the Supremes do decide that this version of the line item veto is unconstitutional. I believe that I would like to see Congress immediately fix the legislation. We have evidence now that this works; it is doing exactly what we hoped it would do. And I believe that the line item veto is not inherently unconstitutional. There may be some procedural problems with the way that you drafted the legislation, but I would hope that Congress, if the Supreme Court does uphold the lower court decision, that the Congress will act with Godspeed to correct the measure and repass this legislation, because quite frankly, Mr. Chairman, the evidence suggests that this has been one of the taxpayers' best friends after 1 year.

Thank you.

Mr. GOSS. Thank you very much.

[The statement of Mr. Moore follows:]

Mr. Chairman, it is a privilege to have the opportunity to testify on the issue of the effectiveness of the line itemm veto after one year. In order to comply with the Truth in Testimony laws, I will note for the record that neither I, nor the Cato Institute, receive any funds from the federal government. Nor have we ever.

Allow me to begin my testimony by praising Republicans in the 104th Congress, who with help from many fiscally conservative Democrats, kept their Contract with America promise and enacted the line item veto. This was heroic legislation because it was enacted despite the fact that Democrat Bill Clinton would be the first president to use the item veto. In the 1970s and 1980s many opponents of the line item veto accused fiscal conservatives of supporting the measure only as a partisan power grab because Republicans had generally controlled the White House, and Democrats had long controlled Congress. The 104th Congress proved these allegations to be wrong.

I should also note for purposes of full disclosure that I have long been an advocate of line item veto authority for the president. As I told this Committee in a hearing on budget reform 2 years ago, "the President should have the line item veto to eliminate the waste in the budget that Congress won't."

I will highlight four points in my testimony regarding the experience of the line item veto after one year.

First, and most critical, is the question of whether the line item veto has worked to reduce wasteful spending. My overall

assessment is that this veto power has worked. In 1997 President Clinton used this new budget cutting tool 82 times to delete unnecessary expenditures in 11 spending bills. The total savings have come to nearly $2 billion over five years. True, in a $1.75 trillion annual budget, this is not a huge sum. But $2 billion is not an insignificant level of savings--even by Washington standards. Moreover, as Gene Sperling, the President's chief economic adviser has noted, "You have to use the line item veto a few times before its deterrent power sinks in."

I reviewed the long lists of programs that were vetoed by President Clinton. I am confident that virtually none of these projects served the national interest.

So far President Clinton has used the veto to eliminate funding for a $600,000 solar aquatic wastewater treatment demonstration project in Vermont; a $2 million Chena River dredging project in Fairbanks, Alaska to benefit a single tour boat operator; a $1 million corporate welfare grant to the Carter County Montana Chamber of Commerce; $900,000 for a Veterans Admin. cemetery the VA says it doesn't need; $1.9 million for dredging a Mississippi lake that primarily serves yachts and pleasure boats; $500,000 for the Neabsco Creek Project in Virginia for removal of creek debris; and other such absurdities.

Congress approved the line item veto and the public demanded it, precisely to purge the budget of these kinds of white elephant projects. So, yes, on balance the line item veto works as intended.

Second, has the President abused the power of the line item

veto as his critics have charged? The answer to this question is, on balance, no. Of course, many complaints have been made about Bill Clinton's use of the line item veto. Senate Appropriations Committee Chairman Ted Stevens, has complained that Clinton's line item vetoes have been a "raw abuse of power." Robert Livingston, the Republican House Appropriations Committee Chairman charges that Clinton is using the veto to "threaten and intimidate" members of Congress. It is also true that there was one incident reported by The Wall Street Journal where the administration reportedly offered to withdraw a threatened line item veto of a $1.5 million cemetery expansion in Rep. Sonny Callahan's (R-AL) district in exchange for his support of IMF funding. Such political horse trading would constitute an abuse of the item veto.

But other than this single incident, there is no evidence of any pattern of abuse by the White House. Moreover, many of the projects line item vetoed by President Clinton were in Democratic districts. So it does not appear that partisanship has been a critical determinant of how the veto has been used.

This is not to say that President Clinton's use of the veto has been exemplary. This administration has failed to provide any coherent justification for why some projects have been terminated and others have passed muster. I agree with congressional critics that the line item veto will work best when the White House establishes understandable and unbendable criteria for the line item veto and then carries out the veto according to those standards. Establishing clear standards of use is the best way to refute the charge that the item veto is being used capriciously or

simply to "punish" political opponents.

My primary complaint with Bill Clinton's use of this veto is not that he has used it too recklessly -- but too sparingly. The 1998 Energy and Water bill, for example, contained 423 unrequested projects -- conveniently, just about one for every district. Clinton cancelled just 8 of them. Most of the other 415 deserved the same fate. If, as President Clinton has suggested, the criteria for wielding this veto power is that the program should be funded at the local level or has costs that exceed public benefits, then the savings could be orders of magnitude higher than the $2 billion achieved so far. For example, I have listed in the appendix to this testimony more than two dozen projects and programs that were not line item vetoed from last year's appropriations bills, but should have been. This list was compiled from fiscal experts at the Cato Institute, Heritage Foundation and Citizens Against Government Waste. Senators John McCain (R, AZ) and Russ Feingold (D, WI) have also done heroic work exposing pork in last year's spending bills.

As this sample list of unproductive federal spending demonstrates, we need the president to have the line item veto authority; but, we also need a president who is not reluctant to wield this power.

I am convinced that a judicious use of the line item veto could save taxpayers $2 to $5 billion annually. In the 1980s, for example, President Reagan requested but was denied rescission requests of this magnitude on average each year. If Reagan had had the line item veto, the national debt might have been $40 to $50

billion lower over the period than it was.

The third issue with respect to the line item veto is whether it shifts too much power of the purse to the White House? I am not a lawyer or a constitutional scholar, so I have no opinion as to the legality of the particular line item veto legislation enacted in the 104th Congress. But I have examined the history of the balance of power between the Executive Branch and the Legislative Branch when it comes to fiscal issues. I very strongly disagree with the charge that it tilts the balance of power too far toward the presidency.

The line item veto does not involve a huge and unprecedented power shift in the direction of the White House. The item veto should be more accurately thought of as a relatively weak and partial restoration of the rightful budgetary powers of the President that were stripped from the executive branch by the 1974 Budget Act. The Budget Act stripped the President of his right to impound funds--a power that was exercised routinely by every president from Thomas Jefferson through Richard Nixon. Jefferson first employed this power to refuse to spend appropriated funds in 1801 when he impounded $50,000 for Navy gunboats.

The founders believed that the President, as the head of the executive branch and therefore responsible for executing the laws and spending taxpayer funds judiciously, had a unilateral authority not to spend money appropriated by the Congress if that spending was unnecessary.

This was an extremely powerful White House authority that was exercised often for nearly the first 200 years of our nation.

Presidents Kennedy, Johnson and Nixon used the impoundment power routinely--and in some years used it to cut federal appropriations by more than 5 percent. In one year Richard Nixon impounded more than 7 percent of domestic appropriations. In 1974 the Congress stripped the president of his lawful impoundment powers and instead gave him two very weak substitutes: the deferral and rescission authority. But as the members of this committee know well, rescissions require Congress to affirmatively approve a presidential request not to spend money. Most rescissions are simply ignored by Congress and never even voted on. And thus through congressional inaction, they are killed.

So the line item veto partially restored the rightful authority of the executive branch that was improperly snatched away in a power grab by the post-Watergate Congress in 1974. Indeed, my preference would be for this Congress to enact a full restoration of the president's impoundment power. Determining whether money appropriated by Congress is or is not actually needed is in my view an appropriate executive branch function. If the president had empoundment power restored, he would not need line item veto.

One final point on the balance of powers issue. We saw last year that Congress easily voted to override a presidential line item veto for military projects that lawmakers believed were meritorious. This incident demonstrated that the item veto does not give the president dictatorial powers over spending. It is easy to imagine that many line item vetoes will face override votes as happened last year. The item veto simply requires that Congress

garner a two-thirds vote in both houses to secure funding for questionable programs. This seems highly reasonable to me.

The fourth and final issue is how should Congress proceed if the line item veto is ruled unconstitutional by the Supreme Court. The answer to this question is clear cut: fix the legislation immediately so it will pass constitutional muster. The line item veto is not inherently unconstitutional. All that is being challenged is the legality of the procedures for the particular version passed in 1995. If this version fails, hopefully the courts will provide a roadmap to determine a line item veto power that would be constitutional. Congress should waste no time in re-enacting the legislation.

Senator Robert Byrd announced last year that he hoped his Christmas present would be "for the Supreme Court to rule the line-item veto act unconstitutional." I am convinced that the eagerness of Senator Byrd and many others in Congress (in both parties) to repeal the line item veto or to have the Supreme Court strike it down for them, is a result of the success of this budget cutting tool. Congress likes the line item veto far more in theory than in practice.

On its merits, the line item veto should be preserved. The critics were wrong: we now have documented evidence showing that the line item veto does save money; it does repel preposterous spending projects that offend the sensibilities of taxpayers.

Fiscal conservatives should not waver in support of this budget tool. No one on this Committee should delude themselves. If the

line item veto is repealed or overturned by the Courts and not re-enacted by Congress, the item veto will be a victim of its own success. The line item veto has shown itself to be one of the taxpayers' best friends--and lord knows, taxpayers have far too few friends in Washington already.

APPENDIX

A BRIEF SAMPLE OF PORK SPENDING IN FY 1998 APPROPRIATIONS

* $286,000 for research to enhance the flavor of roasted peanuts;

* $250,000 for pickle research;

* $3.3 million for shrimp farming studies in Hawaii, Mississippi, Massachusetts, California, and Arizona;

* $700,000 for an "aquatic and fitness center" at Cedar Crest College in Allentown, PA.

* $1.5 million for the Southeastern Pennsylvania Consortium for Higher Education to collect data for social public policy.

* $1.2 million for a business innovation laboratory in Hoboken, NJ.

* $1.35 million to renovate the Paramount Theater in Rutland, VT.

* $2.5 million for a New Mexico Hispanic cultural center.

* $950,000 for a fish hatchery in Ruskin, FL.

* $1.4 million for the Lake Tahoe, California intermodal center.

* $2 million for New Orleans streetcar named "Desire."

* $3 million for Reno Nevada buses.

* $51 million for a regional bus plan in Houston.

* $2 million for the renovation of an Art Gallery in Buffalo.

* $500,000 for continuation of a study of livestock pollution (cow dung) at Tarteton State University.

* $1.5 million for the National Alternative Fuels Training program.

* $1 million for the World Congress on Information Technology in Fairfax, VA.

* $150,000 for development of the George C. Marshall Memorial Plaza in Uniontown, PA.

* Renovation of a theater in Windber, PA.

* $100,000 for hops research in the Pacific Northwest.

* 950,000 for rice research in Arkansas and Texas.

* $250,000 for food fermentation research in North Carolina.

* $500,000 for honey bee research in Texas.

* $1.2 million for potato research

* $150,000 for the National Center for Peanut Competitiveness.

* $100,000 for maple syrup research in Vermont.

* $33 million for wind energy research.

* $55 million for the International Thermonuclear Experimental Reactor.

Source: The Heritage Foundation, Cato Institute, and Citizens Against Government Waste.

Mr. GOSS. Mr. Schatz?

STATEMENT OF THOMAS A. SCHATZ

Mr. SCHATZ. Thank you very much. I apologize for being late. I was talking about this very subject.

Yesterday Citizens Against Government Waste released its 1998 Pig Book Summary, which is our annual compilation of pork-barrel spending according to our seven-point criteria. I would ask that the Pig Book Summary be submitted for the record and also—

Mr. GOSS. Without objection.

[The information follows:]

INTRODUCTION

As official Washington ponders what to do with a federal "budget surplus," and how to respond to a court decision finding the line-item veto law unconstitutional, Citizens Against Government Waste (CAGW) presents a dose of reality. The *1998 Congressional Pig Book Summary* illustrates that the only "surplus" is the excessive amount of pork being served on Capitol Hill.

The 302 projects cited in this year's *Pig Book*, worth $1.8 billion, are the most egregious examples of the more than 2,100 pork-barrel items identified by CAGW in the fiscal year (FY) 1998 appropriations bills – an increase of more than 500 items since FY 1997. Total pork-barrel spending dropped by $1.3 billion, or 9 percent, from $14.5 billion to $13.2 billion since last year. A pleasant surprise, but it would have been a remarkable achievement, even for Congress, to increase pork by another 16 percent, as it did in 1996 and 1997.

If members of Congress showed restraint out of fear of the line-item veto, their concerns were ill-founded. Out of $526.6 billion in FY 1998 discretionary spending, the President vetoed only $483 million, or 0.1 percent. He not only missed a historic opportunity to wage an all-out war on pork, he also sent a message to appropriators that they need not worry about their pet projects.

The top three increases from FY 1997 to FY 1998 were: Foreign Operations from $32 million to $202 million (522 percent); Veterans Affairs, Housing and Urban Development and Independent Agencies (VA/HUD) from $336 million to $683 million (103 percent); and Energy and Water from $270 million to $460 million (70 percent). The best, Legislative Branch, was pork-free.

The new flavor of pork for FY 1998, the Economic Development Initiative (EDI) program, leaves a sour taste in taxpayers' mouths. When these projects were called special purpose grants in prior VA/HUD Appropriations bills, Republicans took Democrats

to task and called them some of the worst examples of wasteful spending in Washington. EDI funds in FY 1998 went to science centers, theaters, an art gallery and other not-so-national priorities. Other popular venues for pork included USDA special research grants and DOT bus and bus-related facilities grants.

Mississippi led the country with $848 million in total pork. The state's per capita pork was $310, shattering Hawaii's per capita total of $131 in 1997. The runners-up were Alaska with $205 per capita ($125 million), the District of Columbia with $123 per capita ($65 million), and Hawaii with $86 per capita ($102 million).

Euphoric talk of a budget surplus is premature and dangerous. Premature because the surplus is predicated on increased revenue and ignores more than $800 billion in additional debt through FY 2003, and dangerous because too many officials want taxpayers to let their guards down and not worry about government waste. Who said you can't balance the budget and waste money at the same time? The temptation to throw away our tax dollars will be greater than ever, and stopping it will require the utmost vigilance.

All of the items in the *Pig Book Summary* meet at least one of CAGW's seven criteria, but most satisfy at least two:

- Requested by only one chamber of Congress;
- Not specifically authorized;
- Not competitively awarded;
- Not requested by the President;
- Greatly exceeds the President's budget request or the previous year's funding;
- Not the subject of congressional hearings; or
- Serves only a local or special interest.

I. AGRICULTURE

Cooperative State Research, Education and Extension Service (CSREES) special research grants are once again the pork of choice for agriculture appropriators. United States Department of Agriculture (USDA) officials have traditionally frowned on the practice of funding grants that cater to only one state or commodity. However, from Aegilops cylindricum to wool research, Congress continues to ignore USDA's pleas. In addition, a large number of these grants have evolved into virtual entitlements. The tally for special research grants for fiscal year 1998 is $51 million, even though USDA officials only requested $10 million. The good news is that agriculture pork in FY 1998 is $119 million, or 24 percent, less than in FY 1997.

Examples of wasteful CSREES grants in FY 1998 include:

$3,536,000 for wood utilization research (Maine, Mich., Minn., Miss., N.C., & Ore.). A perennial *Pig Book* favorite, this research has received more than $45 million since 1985.

$800,000 for the Food and Agriculture Policy Research Institute (FAPRI). The Institute acknowledges that its projects have never been evaluated to determine whether or not they meet any defined objectives. Even though taxpayers fund FAPRI, there is no requirement that its studies be made available to the public, as evidenced by the lack of publicity surrounding its 1996 report criticizing the sugar program – which only became widely available *after* Congress voted to continue the controversial program.

AGRICULTURE (continued)

$800,000 for the Viticulture Consortium. According to USDA testimony, this research is designed to "help the viticulture [grape] and wine industries remain competitive in the United States and in the global market." Since 1996, $1.8 million has been appropriated for such research; the FY 1998 total is an increase of 60 percent over FY 1997.

$600,000 added in conference for precision agriculture research in the state of appropriators Sen. Thad Cochran (R-Miss.) and Reps. Mike Parker (R-Miss) and Roger Wicker (R-Miss.).

$500,000 added in conference for ecosystems research in the state of appropriators Sen. Richard Shelby (R-Ala.) and Reps. Sonny Callahan (R-Ala.) and Robert Aderholdt (R-Ala.).

$250,000 added by the Senate for Floriculture research in the state of Senate appropriator Daniel Inouye (D-Hawaii). The original objective of this research was to maintain the competitiveness of Hawaii's floriculture industry. Since 1989, $2.8 million has been appropriated for such research.

$220,000 added by the Senate for lowbush blueberry research in Maine. Maine produces 99 percent of all national lowbush blueberries, so the research should be funded solely by the state. The only nonfederal support ($65,000) comes from the collection of blueberry tax funds. Since 1990, $1.8 million has been appropriated for such research.

$150,000 added by the House for the National Center for Peanut Competitiveness. (Ironically, because the federal government exerts ironclad control over every aspect of the peanut program, the industry can never become competitive.)

AGRICULTURE (continued)

$148,000 added by the Senate for Delta Rural Revitalization in the state of Senate Agriculture Appropriations Subcommittee Chairman Thad Cochran (R-Miss.). The initial objectives of the research were completed in 1990, and the additional research was scheduled to be completed in September 1997. Since 1989, $1.6 million has been appropriated for such research.

$127,000 added by the Senate for global marketing support services in the state of Senate appropriator Dale Bumpers (D-Ark.). According to testimony, the goal of this research is to identify "potential foreign markets for Arkansas products...." Since 1994, $450,000 has been appropriated for such research.

$127,000 added by the Senate for multicropping strategies for aquaculture in the state of Senate appropriator Daniel Inouye (D-Hawaii). Part of this research money goes toward edible seaweed cultivation. Since 1987, $1.7 million has been appropriated for such research.

$32,000 added by the Senate for the Center for Rural Studies in the state of Senate appropriator Patrick Leahy (D-Vt.). A portion of this grant money is used for analytical reports to guide the development of Vermont retail shopping areas. No formal evaluation of this project has been undertaken by USDA. Since 1992, $237,000 has been appropriated for this research.

The following Agricultural Research Service construction projects were also added without budget requests:

$7,000,000 added by the Senate for the National Center for Natural Products in the state of Senate Agriculture Appropriations Subcommittee Chairman Thad Cochran (R-Miss.).

AGRICULTURE (continued)

$6,000,000 added by the Senate for the National Center for Cool and Cold Water Aquaculture in Leetown, West Virginia, the hometown of Senate Appropriations Committee Ranking Member Robert Byrd (D-W.Va.). Since 1995, $13.9 million has been appropriated for this research facility. (Appropriators have long appreciated the lucrative value of attaching the word "national" to their local pet projects in order to throw taxpayers off the scent of pork.)

$5,200,000 added by the House for the Western Human Nutrition Center in the district of House Agriculture Appropriations subcommittee member Vic Fazio (D-Calif.). (Just one example of an appropriator's "appetite" for pork.)

$4,824,000 added by the Senate for the U.S. Vegetable Laboratory in Charleston, South Carolina, in the state of Senate appropriator Ernest Hollings (D-S.C.). (CAGW has obtained a sample of the vital research being conducted there: "No, no, no, you need a carrot *and* a stick!")

$700,000 added in conference for the Joranado Range Research Center in the state of Senate appropriator Pete Domenici (R-N.M.) and House Agriculture Appropriations Subcommittee Chairman Joe Skeen (R-N.M.).

$606,000 added by the Senate for pest quarantine and integrated pest management in the state of Senate appropriator Conrad Burns (R-Mont.).

II. COMMERCE, JUSTICE, STATE AND THE JUDICIARY

The Department of Commerce by itself is a grab bag of government agencies. Some of the various missions housed there include economic development, scientific research, technology development, and trade promotion. Put appropriations for the Departments of Commerce, Justice, State and the Judiciary together into one bill, and the result is a potpourri of pork. The FY 1998 bill rang in with $470.8 million worth of pork – just above the previous year's total of $470.3 million. Here are some of the items Congress added to the budget request:

$5,000,000 added in conference for research on products, processes and technologies using underused natural resources and environmentally sound technologies at Montana State University in the state of Senate appropriator Conrad Burns (R-Mont.). (Taking advantage of underused resources – what a brilliant concept! What's next, a government program for picking up the loose change behind seat cushions?)

$3,800,000 added by the Senate for development of a national resource center at Mount Washington in the state of Senate Commerce Appropriations Subcommittee Chairman Judd Gregg (R-N.H.).

$1,800,000 added by the Senate and conference for four projects in the state of Senate Commerce Appropriations Subcommittee Ranking Member Ernest F. Hollings (D-S.C.), including $500,000 each for the Mount Pleasant and Charleston Police Departments for computer enhancements and equipment upgrades, and $300,000 for implementation of the Charleston Harbor project.

COMMERCE (continued)

$1,250,000 added by the Senate for programs of the Oceanic Institute (OI) in Hawaii, the state of Senate appropriator Daniel K. Inouye (D-Hawaii), including $750,000 for Hawaiian fisheries development and $500,000 for the Hawaii Stock Management Plan. A 1995 audit by USDA found that OI "did not comply with Federal regulations or with the terms of the grant agreements. OI used grant funds for purposes that were not specified in its grant budgets and that were not approved by ARS [Agricultural Research Service] or CSREES [Cooperative State Research, Education and Extension Service]. It also made unallowable procurements with related parties and did not always perform required cost analyses, document the bases for contractor selection, or justify the lack of competition when procuring goods and services." In flagrant defiance of this report, Senator Inouye added $1,250,000 each year for OI in fiscal years 1996, 1997 and 1998.

$1,000,000 added by the Senate for the Gambling Impact Study Commission. (The final report should point out that gambling with the taxpayers' money on Capitol Hill has put the nation $5.5 trillion in debt!)

III. DEFENSE

Supporters of a strong national defense understand that wasting scarce defense dollars is the ultimate disservice to the United States. The ability to protect U.S. sovereignty and that of our allies is seriously threatened when Congress lards up the defense bill with useless and wasteful projects. Rather than exploiting the Department of Defense (DoD) as their personal automated teller machine, members of Congress need to ensure that all defense money is spent wisely. At least total defense pork decreased by $300 million, or 5 percent, from FY 1997.

$720,000,000 added by Senate Majority Leader Trent Lott (R-Miss.) for an additional DDG-51 ship at the Ingalls Shipyard in Mississippi. Sen. Lott is unrepentant in his pork-barreling, stating "I'll do anything for that [Ingalls] shipyard." (That sure is a Lott of pork.)

$98,000,000 added by the Senate for a space-based laser. The Office of Management and Budget specifically opposed the addition of this funding. Not coincidentally, Mississippi is on the short list of locations to build this laser.

$30,400,000 added in conference for two CH-60 helicopters. Funding continues even though the Senate has explicitly said that the Navy has failed to justify its need for the program.

$26,400,000 added by the Senate for projects in the state of prolific pork-barreler Daniel Inouye (D-Hawaii): $8,000,000 for the Pacific Disaster Center; $7,000,000 for the Center of Excellence for Researching in Ocean Sciences; $5,400,000 for the small business development program; $5,000,000 for the Kauai test facility; and $1,000,000 for the eradication of Brown Tree snakes.

DEFENSE (continued)

$25,000,000 added by the House for the Predator Unmanned Aerial Vehicle. The General Accounting Office has criticized the Predator for its lackluster performance. The vehicle suffered three significant failures during testing – one due to hostile fire in Bosnia, another due to engine failure, and the third due to unknown causes.

$15,000,000 for electric vehicle research. Since 1994, $121 million has been appropriated for such research. (Appropriators must have confused DoD with the Department of Transportation.)

$13,000,000 added by the Senate for Russian-American observational satellites.

$11,000,000 added by the Senate for the High Frequency Active Auroral Research Program (HAARP). Dubbed everything from a "mind control project" to a "mode of global military domination," this boondoggle is a thicket of 180 antennas designed to study the ionosphere. Every year, Senate Appropriations Committee Chairman Ted Stevens (R-Alaska) finds it in his heart (and taxpayers' wallets) to circumvent established budgetary procedures to fund HAARP.

$5,000,000 added by the Senate for the North Star Borough landfill in the state of Senate Appropriations Committee Chairman Ted Stevens (R-Alaska).

$5,000,000 added by the Senate for the Scorpius project by Senate Defense appropriations subcommittee member Richard Shelby (R-Ala.). In September 1997, Sen. Shelby bragged in a press release about how he added funding for this project, which has the goal of providing low-cost access to space. (Not off to a very good start, is it?)

DEFENSE (continued)

$4,000,000 added by the Senate for the National Automotive Center. (This is enough to drive a taxpayer crazy.)

$3,000,000 added by the Senate for the Southern Observatory for Astronomical Research. The funds will support the construction of a state-of-the-art telescope high atop a mountain in South America to peer millions of years back in time.

$3,000,000 added in conference for the 21st Century National Security Study Group at the request of House Speaker Newt Gingrich (R-Ga.) to do what is already being done at federal civilian and military agencies and countless other privately funded research institutes across the country; that is, to discern future national security concerns and the appropriate implementation strategies.

$100,000 added in conference for the preservation and protection of a Revolutionary War gunboat at the bottom of Lake Champlain (better known as the newest Great Lake), which straddles New York and Vermont.

IV. DISTRICT OF COLUMBIA

The District of Columbia's woes are well-known. From decapitated parking meters to indicted police officers, the last concern for D.C. is pork-barrel spending. A very close scouring of the D.C. appropriations bill uncovered only one project worthy of this year's Pig Book:

$8,000,000 added by the Senate for the federal payment for city government management reform. (Now that's irony!)

V. ENERGY AND WATER

Energy and Water appropriations pork was on the rise even before a balanced budget was proposed, so taxpayers should expect rough seas ahead during the feeding frenzy that is sure to take place as part of the countdown to the midterm elections. Watch for appropriators to use the FY 1999 bill as a way to buy votes for reelection. Army Corps of Engineers pork increased 119 percent from $120 million in FY 1997 to $263 million in FY 1998.

$10,100,000 added by the House for general construction at the Natomas American River watershed in the district of House Energy and Water Appropriations Subcommittee Ranking Member Vic Fazio (D-Calif.). This construction will encourage new residential development behind levees, thereby increasing the flood risk to people and property.

$8,438,000 added by the Senate for projects in the state of Senate Appropriations Committee Chairman Ted Stevens (R-Alaska): $6,638,000 for general construction at St. Paul Harbor; $1,200,000 for general construction for Dillingham shoreline erosion; and $600,000 ($100,000 each) for general investigations at Valdez Harbor, Port Lions Harbor, Matanuska River, Kenai River, Douglas Harbor, and Ship Creek.

$7,650,000 added by the Senate and conference for projects in the state of Senate Energy and Water Appropriations Subcommittee Chairman Pete Domenici (R-N.M.): $5,000,000 for Albuquerque wastewater recycling; $1,000,000 for operation and maintenance of the Upper Rio Grande water operations model; $500,000 for Santa Fe water reuse; $450,000 for the San Juan Gallup-Navajo pipeline; $400,000 for the Rio Grande conveyance canal/pipeline; and $300,000 for the Ute reservoir pipeline.

ENERGY AND WATER (continued)

$4,350,000 added by the Senate and conference for projects in the state of Senate Energy and Water Appropriations Subcommittee Ranking Member Harry Reid (D-Nev.): $3,750,000 for a Las Vegas shallow aquifer desalination demonstration and $600,000 for general investigation at Truckee Meadows.

$1,500,000 added by the Senate for projects in the state of Senate Energy and Water Appropriations subcommittee member Robert Bennett (R-Utah): $1,000,000 for general construction at Little Dell Lake and $500,000 for Tooele wastewater treatment and reuse.

$1,500,000 added by the Senate for projects in the state of Senate Energy and Water Appropriations subcommittee member Byron Dorgan (D-N.D.): $750,000 for operation and maintenance of the Missouri River Betion Ft. Peck and Mt. Gavins Dam and $750,000 for operation and maintenance of South Dakota and North Dakota section 33.

$900,000 added in conference for general construction at the Louisiana State Penitentiary in the state of House Appropriations Committee Chairman Robert Livingston (R-La.)

$500,000 added in conference for operation and maintenance of an Army Corps of Engineers project in Marina Del Rey in the district of Rep. Jane Harman (D-Calif.).

$365,000 added by the Senate and conference for projects in the state of Senate Minority Leader Tom Daschle (D-S.D.): $185,000 for the Crow Creek rural water supply system; $100,000 for the James River; and $80,000 for the Cheyenne River Sioux reservation.

ENERGY AND WATER (continued)

$225,000 added by the House for general construction in Williamsport in the district of House Energy and Water Appropriations Subcommittee Chairman Joseph McDade (R-Pa.).

$140,000 added in conference for projects in the district of Representative Dana Rohrabacher (R-Calif.): $100,000 for general investigation in the city of Huntington Beach and $40,000 for general investigation of the Bolsa Chica channel.

$100,000 added in conference for general investigation at Lake Worth Inlet in the district of Representative E. Clay Shaw (R-Fla.).

Other Energy pork includes:

$3,900,000 added in conference for projects in the state of Senate Appropriations Committee Chairman Ted Stevens (R-Alaska): $2,000,000 for the Power Creek hydroelectric project in Cordova; $1,000,000 for the Upper Lyn canal regional electric project in Scagway; $800,000 for the Old Harbor hydroelectric project; and $100,000 for hydroelectric facilities completion in the village of Scammon Bay.

$3,000,000 added by the Senate for the Russian-American fuel cell consortium.

$750,000 added by House Energy and Water Appropriations Subcommittee Ranking Member Vic Fazio (D-Calif.) for the Gridley rice straw project. This project, which was designed to convert rice into ethanol, has experienced serious contract management problems since it began in 1995. The search for a new company to fulfill the contract will lead to further delays and cost overruns.

VI. FOREIGN OPERATIONS

The Foreign Operations, Export Financing, and Related Agencies Appropriations Bill does not usually contain as much pork as other appropriations bills. Nevertheless, some of the items targeted for funding by this bill are surprisingly parochial. While total pork increased five-fold (from $32.6 million in FY 1997 to $202.9 million in FY 1998), the most egregious projects remained familiar. Each of the following nonrequested projects has a pork-barrel pedigree:

$19,600,000 added by the House for the International Fund for Ireland (IFI). Started as a going-away gift for former House Speaker Thomas P. "Tip" O'Neill, the IFI tries to aid the peace process by funding golf videos, pony trekking centers, and sweater exports. The Senate initially declined to request funds for IFI, noting that it still had $40,000,000 available from previous years that had not yet been obligated to any projects or activities. The IFI has been included in six out of seven *Pig Books*.

$3,000,000 added for the International Fertilizer Development Center (IFDC), headquartered in the state of Senate Foreign Operations Appropriations subcommittee member Richard C. Shelby (R-Ala.). The IFDC was featured in the *1997 Pig Book*. (This program duplicates the output of many government agencies.)

$750,000 added by the House for the Neotropical Migratory Bird Initiative of the National Fish and Wildlife Foundation. This project was included in the *1995* and *1996 Pig Books*.

$500,000 added by the Senate for the United States Telecommunications Training Institute. This handout to the telecommunications industry was included in the *1996* and *1997 Pig Books*.

VII. INTERIOR

Appropriators again turned the National Park Service into the National Pork Service, adding 72 nonrequested items to that agency's budget. The Bureau of Land Management, the Fish and Wildlife Service, and the Department of Agriculture's Forest Service were also frequent conduits of pork. The FY 1998 Interior Appropriations Bill contained $355 million worth of pork, up 54 percent from $230 million the previous year. Here are some of the items not requested by the President:

$15,581,000 added by the Senate and conference for 16 projects in the state of Senate Interior Appropriations subcommittee member and Appropriations Committee Chairman Ted Stevens (R-Alaska), including: $4,200,000 for land acquisition at the Wrangell-St. Elias National Park and Preserve; $2,200,000 for construction at the Alaska Native Heritage Center; $500,000 for the Alaska Spruce Bark Beetle Task Force; $400,000 for headquarters and interpretive center construction at Wrangell-St. Elias National Park and Preserve; $100,000 for the Alaska Gold Rush Centennial Task Force; $100,000 for the Alaska gold rush centennial exhibits and living history presentations; and $100,000 for the Aleutian World War II National Historic Area.

$9,860,000 added by the Senate and conference for five projects in the state of Senate Interior Appropriations subcommittee member Thad Cochran (R-Miss.), including: $5,100,000 for road construction along the Natchez Trace Parkway; and $1,695,000 for rehabilitation, plus $1,000,000 for an interpretive center, both at Vicksburg National Military Park.

INTERIOR (continued)

$9,225,000 added by the Senate for five projects in the state of Senate Interior Appropriations Subcommittee and Appropriations Committee Ranking Member Robert C. Byrd (D-W.Va.), including: $3,000,000 for land acquisition at Canaan Valley National Wildlife Refuge; and $2,525,000 for construction of trails and access, plus $2,000,000 for land acquisition, both at New River Gorge National River.

$9,150,000 added by the Senate for six projects in the state of Senate Interior Appropriations subcommittee member Pete V. Domenici (R-N.M.), including $3,000,000 for an arts center at the Hispanic Cultural Center and $2,000,000 for land acquisition at Petroglyph National Monument.

$6,398,000 added by the Senate for six projects in the state of Senate Interior Appropriations Subcommittee Chairman Slade Gorton (R-Wash.), including: $2,223,000 for construction at the Vancouver National Historical Reserve; $840,000 for trail construction at the Steigerwald National Wildlife Refuge; and $750,000 for Washington Salmon Enhancement.

$5,360,000 added by the Senate for projects in the state of Senate Interior Appropriations subcommittee member Ernest F. Hollings (D-S.C.): $2,860,000 for site development at Fort Sumter National Monument; $2,000,000 for land acquisition at Waccamaw National Wildlife Refuge; and $500,000 to rehabilitate the Penn Center.

$5,170,000 added by the House for five projects in the district of House appropriator Joseph M. McDade (R-Pa.), including $3,500,000 for education facilities and trail development at Delaware Water Gap National Recreation Area and $800,000 for the Partners for Wildlife program on soil erosion in Bradford County.

INTERIOR (continued)

$5,166,000 added by the Senate for five projects in the state of Senate Interior Appropriations subcommittee member Dale Bumpers (D-Ark.), including $3,400,000 for Fort Smith National Historic Site rehabilitation and $1,266,000 for land acquisitions at Ouachita National Forest, Arkansas Post National Monument, and Ozark National Forest.

$3,752,000 added by the House for construction at Carlsbad Caverns National Park in the district of House Interior Appropriations subcommittee member Joe Skeen (R-N.M.).

$3,000,000 added by the Senate for projects in the state of Senate Interior Appropriations subcommittee member Barbara Boxer (D-Calif.), including $2,000,000 for the acquisition of Bair Island at Don Edwards National Wildlife Refuge and $1,000,000 for Salton Sea recovery planning and bioremediation efforts.

$2,245,000 added by the House for access and parking construction projects at Fort Necessity National Battlefield in the district of House Interior Appropriations subcommittee member John P. Murtha (D-Pa.). (Maybe they should just rename it "Fort Non-Necessity.")

$2,225,000 added by the Senate for projects in the state of Senate Interior Appropriations subcommittee member Conrad Burns (R-Mont.): $1,925,000 for redevelopment of a fire operations center in Billings and $300,000 for whirling disease research at Montana State University.

$1,910,000 added by the Senate for five projects in the state of Senate Interior Appropriations subcommittee member Robert Bennett (R-Utah), including $510,000 for construction of a facility at Timpanagos Cave National Monument and $200,000 for the Virgin River Basin Recovery Plan.

INTERIOR (continued)

$1,750,000 added by the House for land acquisitions in the district of House appropriator Rodney Frelinghuysen (R-N.J.): $1,000,000 for Wallkill River National Wildlife Refuge and $750,000 for Great Swamp National Wildlife Refuge.

$1,000,000 added by the Senate for rehabilitation of the John Hay Estate in the state of Senate Interior Appropriations subcommittee member Judd Gregg (R-N.H.).

$800,000 added by the House for projects in the district of House appropriator Steny Hoyer: $600,000 for restoration of Sotterly Plantation and $200,000 for construction of facilities at the Accokeek Foundation.

$700,000 added by the House for Forest Service construction in the district of House Interior Appropriations subcommittee member Zach Wamp (R-Tenn.): $500,000 for Chilowee campground and $200,000 for the Upper Ocoee corridor.

$200,000 added by the Senate for Don Henley's Caddo Lake Institute for its scholars program in the state of Senate Interior Appropriations subcommittee member Ben Nighthorse Campbell (R-Colo.).

VIII. LABOR, HHS, AND EDUCATION

Porking up the Labor/HHS/Education Appropriations Bill does not create jobs, move people off of the welfare rolls, or educate anyone. The only goal achieved is the waste of scarce tax dollars. A handful of House members tried to stop the funding of many of these pork items. Though they were not completely successful, they did have some impact: Total Labor/HHS/Education pork is down an amazing 68 percent, from $2.1 billion in FY 1997 to $690 million for FY 1998.

The following projects were awarded noncompetitively and earmarked by the Senate without budget requests through the Institute of Museum and Library Sciences:

$4,000,000 for projects to "use the resources of libraries and children's museums to provide innovative learning opportunities for at-risk children." The conference notes "urge" that the Children's Museums in Baltimore, Md.; Boston, Mass.; and Philadelphia, Pa., receive the funding.

$1,930,000 for projects in the state of Senate Labor/HHS/ Education Appropriations Subcommittee Chairman Arlen Specter (R-Pa.): $1,130,000 to maintain and interpret a historical collection of notes at the medical library of College of Physicians in Philadelphia and $800,000 for a "one-of-a-kind historical library in Pennsylvania's anthracite coal region to assist in the cataloguing and historic preservation of detailed information regarding miners' compensation and occupational records, geological studies, maps, newspaper clips and more than 8,000 photographs."

LABOR/HHS/EDUCATION (continued)

$1,000,000 for a demonstration project to "provide interactive communications via the Internet to the information resources available between universities and their satellite campuses, community colleges and public, school and special libraries, and other entities" in the state of Senate appropriator Conrad Burns (R-Mont.). The Senate report language "urges" that the money be sent to the Montana information consortium, which includes the University of Montana and Montana State University.

$1,000,000 to digitize the card catalog for the New York Public Library.

Other Labor/HHS/Education pork added without budget requests includes:

$24,798,000 added by the House for Health Professions' Centers of Excellence. (The Centers of Mediocrity received no funding this year.)

$3,798,000 added by the House for general dentistry residencies. (Maybe they're looking for a way to put some bite into the line-item veto.)

$1,000,000 added by the Senate for the "establishment of a center to provide in-state laboratory testing for businesses and training for high school graduates in the use of scientific testing equipment and techniques" in the state of Senate Labor/HHS/Education Appropriations subcommittee member James Jeffords (R-Vt.).

$1,000,000 added by the Senate for "a project similar to the ACCESS program at Prairie View A&M University" in the state of Senate Labor/HHS/Education Appropriations subcommittee member Kay Bailey Hutchison (R-Texas).

LABOR/HHS/EDUCATION (continued)

$500,000 added by the Senate for the University of Hawaii Center on the Family in the state of Senate appropriator Daniel Inouye (D-Hawaii).

$500,000 added in conference for the National Health Museum. The initial appropriation is for the establishment of a commission appointed by the President and House and Senate leadership to study the museum proposal and develop a master plan. Taxpayers managed to escape the President's government-run healthcare plan – now they need to pull the plug on Congress' government-run health museum.

IX. LEGISLATIVE BRANCH

Mindful appropriators ensured that the Legislative Branch Appropriations Bill was pork-free in FY 1998. Even though this appropriation is not a large one, it sets an example for all appropriators to follow.

X. MILITARY CONSTRUCTION

Military Construction pork dropped slightly in FY 1998, to $921 million from $930 million the previous year. Of that $921 million, $287 million worth of nonrequested items were vetoed by the President. Unfortunately, Congress overrode those vetoes in February. Here are some of the items Congress added to the budget request:

$32,450,000 added by the Senate for projects in the state of Senate Military Construction Appropriations Subcommittee Chairman Conrad Burns (R-Mont.), including $14,950,000 for an armed forces reserve center in Billings and $13,000,000 for family housing at Malmstrom Air Force Base.

$28,950,000 added by the Senate for projects in the state of Senate appropriator Slade Gorton (R-Wash.) and Senate Military Construction Appropriations Subcommittee Ranking Member Patty Murray (D-Wash.): $16,000,000 for family housing at Whidbey Island Naval Air Station; and $8,200,000 for an education center and library, plus $4,750,000 for additions and alterations to a fire station, both at Fairchild Air Force Base.

$22,250,000 added by the House for projects in the district of House appropriator Ed Pastor (D-Ariz.): $12,250,000 for bachelor enlisted quarters at Yuma Marine Corps Air Station and $10,000,000 for purchase of the Goldwater Range near Luke Air Force Base.

$22,132,000 added by the Senate for projects in the state of Senate Military Construction Appropriations subcommittee member Daniel K. Inouye (D-Hawaii), including $7,400,000 for an advanced seal delivery system facility at Pearl Harbor Naval Station and $5,232,000 for additions and alterations to an administrative training facility at Bellows Air Force Base.

MILITARY CONSTRUCTION (continued)

$20,600,000 added by the House for projects at Camp Pendelton Marine Corps Base in the district of House Military Construction Appropriations Subcommittee Chairman Ron Packard (R-Calif.): $16,120,000 for bachelor enlisted quarters and $4,480,000 for a child development center.

$17,800,000 added by the Senate for projects in the state of Senate appropriator Richard C. Shelby (R-Ala.): $13,000,000 for a missile readiness software annex and $4,800,000 for a munitions complex/aircraft support shop at Dannelly Field.

$16,700,000 added by the Senate for projects in the state of Senate Appropriations Committee Chairman Ted Steven (R-Alaska): $6,100,000 for an electrical systems upgrade at Elmendorf Air Force Base; $6,000,000 for a potable water storage upgrade at Eilson Air Force Base; and $4,600,000 for an Army National Guard aviation operations facility in Bethel.

$14,325,000 added by the Senate for projects in the state of Senate appropriator Thad Cochran (R-Miss.): $9,900,000 for an operation and maintenance facility at the Mississippi Army Ammunition Plant and $4,425,000 for an Army National Guard readiness center in Senatobia.

$11,500,000 added by the House for barracks renewal at Fort Stewart's Hunter Army Air Field in the district of House Military Construction Appropriations subcommittee member Jack Kingston (R-Ga.).

$10,000,000 added by the House for an ammunition demilitarization support facility at Pine Bluff in the district of House appropriator Jay Dickey (R-Ark.).

MILITARY CONSTRUCTION (continued)

$9,500,000 added by the House for the upgrading of KC-135 flightline facilities at Fairchild Air Force Base in the district of House appropriator George Nethercutt, Jr. (R-Wash.).

$8,600,000 added by the House for a child development center at Wright-Patterson Air Force Base in the district of House Military Construction Appropriations subcommittee member David Hobson (R-Ohio).

$8,000,000 added by the House for family housing at Fort Huachuca in the district of House appropriator Jim Kolbe (R-Ariz.).

$7,581,000 added by the House for projects at McConnell Air Force Base in the district of House Military Construction Appropriations subcommittee member Todd Tiahrt (R-Kan.): $5,000,000 for additions and alterations to a child development center; $2,000,000 for alterations to a base maintenance shop; and $581,000 for a family housing management office.

$7,300,000 added by the House for family housing at Picatinny Arsenal in the district of House appropriator Rodney Frelinghuysen (R-N.J.).

XI. TRANSPORTATION

Nothing says pork like transportation. Every year, in a thinly veiled attempt to buy votes and power, Congress loads up the Transportation Appropriations Bill with unnecessary transportation projects. Transportation pork is up 20 percent from FY 1997, and this year's favorite means for abuse is the bus and bus-related facilities program. Department of Transportation officials have told CAGW that they are constantly frustrated by Congress' mad dash to earmark these funds. But committee members apparently believe that the horse trading that goes on in conference is their privilege. In FY 1998, 65 percent of all state-specific pork was confiscated by 5.4 percent of the members of Congress – the 29 senators and representatives on the – Transportation Appropriations Subcommittee. Those are some pretty fancy horses they're trading, but it's a closed auction with the taxpayers picking up the tab.

$22,200,000 added by the Senate for projects in the state of Senate Transportation Appropriations Subcommittee Chairman Richard Shelby (R-Ala.): $6,000,000 for phase II of the Birmingham downtown intermodal transportation facility; $5,000,000 for phase I of the Huntsville intermodal center; $3,000,000 for Birmingham and Jefferson County buses; $2,200,000 for traffic integration and flow control; $1,500,000 for Mobile bus replacement; $1,500,000 for Montgomery bus replacement; $1,000,000 for Tuscaloosa bus replacement; $1,000,000 for the Mobile municipal pier intermodal waterfront access rehabilitation project; and $1,000,000 for the Mobile southern market historic intermodal center.

TRANSPORTATION (continued)

$17,500,000 added by the Senate for projects in the state of Senate Transportation Appropriations subcommittee member Christopher Bond (R-Mo.): $8,000,000 for state buses and bus facilities; $4,500,000 for the Kansas City Union Station intermodal center; $3,500,000 for the Kansas City buses and fare box collection system; $1,000,000 for Kansas City intermodal common communications technology; and $500,000 for the Springfield to Branson commuter rail project.

$17,250,000 added by the Senate for projects in the state of Senate Appropriations Committee Ranking Member Robert Byrd (D-W.Va.): $9,250,000 for statewide buses and bus facilities and $8,000,000 for Barboursville/Ona traffic management.

$14,400,000 added by the Senate for projects in the state of Senate Transportation Appropriations subcommittee member Robert Bennett (R-Utah): $4,000,000 for Salt Lake City commuter rail; $3,500,000 for Utah intelligent transportation systems; $2,500,000 for Utah Transit Authority Olympic intermodal transportation centers; $2,000,000 for Utah Transit Authority bus acquisition; $2,000,000 for Utah Transit Authority Olympic park and ride lots; and $400,000 for Park City Transit buses.

$13,500,000 added by the Senate for projects in the state of Senate Transportation Appropriation subcommittee members Slade Gorton (R-Wash.) and Patty Murray (D-Wash.): $5,000,000 for King County park and ride lots; $1,500,000 for the Kasch park community transit facility; $1,500,000 for Whatcom Transportation Authority facilities; $1,500,000 for King County metro commuter intermodal connector; $1,250,000 for a statewide roadway weather information system; $1,000,000 for the Chelan/Douglas multimodal center; $1,000,000 for the Olympic Peninsula International Gateway Transportation Center; and $750,000 for state communication emergency call boxes.

TRANSPORTATION (continued)

$12,750,000 added by the Senate for projects in the state of Senate Transportation Appropriations subcommittee member Arlen Specter (R-Pa.): $6,000,000 for the Pennsylvania Turnpike Commission intelligent transportation system; $4,000,000 for statewide buses and bus facilities projects; $1,500,000 for the Wilkes-Barre intermodal facility; $1,000,000 for the Philadelphia Eastwick intermodal center; and $250,000 for the Urban Transportation Safety Systems Center in Philadelphia.

$7,750,000 added by the Senate for projects in the state of Senate Transportation Appropriations subcommittee member Pete Domenici (R-N.M.): $3,750,000 for statewide buses and bus facilities; $1,000,000 for Las Cruces, Santa Fe, and Albuquerque park and ride; $1,000,000 for demonstration of universal electric transportation subsystems; $1,000,000 for the Albuquerque uptown transit center; and $1,000,000 for an intermodal technology demonstration project.

$5,500,000 added by the House for the Mobile intermodal facility in the district of House Transportation Appropriations subcommittee member Sonny Callahan (R-Ala.).

$1,575,000 added by the House for projects in the district of House Transportation Appropriations subcommittee member John Olver (D-Mass.): $875,000 for the Franklin County traveler information system; and $700,000 for Greenfield Montague Transportation Area buses.

$1,550,000 added by the House for the Cumberland Gap Tunnel in the district of House Transportation Appropriations subcommittee member Harold Rogers (R-Ky.).

TRANSPORTATION (continued)

$100,000 added in conference for Gadsen, Alabama, buses and vans in the district of House Transportation Appropriations subcommittee member Robert Aderholdt (R-Ala.).

XII. TREASURY/POSTAL SERVICE/GENERAL GOVERNMENT

The FY 1998 Treasury/Postal Service/General Government Appropriations Bill contained only $16.5 million worth of pork, compared to the previous year's pork total of $350.8 million. The main reason for this 95 percent drop was the absence of any line-items in the Federal Buildings Fund, which tallied $259 million in pork in FY 1997. Because the revenue coming into the Federal Buildings Fund was less than anticipated, Congress and the General Services Administration have deferred new construction for one year. But $16.5 million in pork is exactly $16.5 million too much. Here are some of the items Congress added to the budget:

$10,000,000 added for establishment of three new High Intensity Drug Trafficking Areas (HIDTA) programs: $6,000.000 for Kentucky, Tennessee, and West Virginia; $3,000,000 for Milwaukee, in the state of Senate Treasury/Postal Appropriations Subcommittee Ranking Member Herb Kohl (D-Wis.); and $1,000,000 for central Florida. That makes eight unrequested HIDTAs since last year, bringing the percentage of the U.S. population living in HIDTAs to 25 percent. At this rate, the entire country will be designated an HIDTA within the next decade.

$2,000,000 added by the House for digital learning technologies for the 21st Century Distributed Learning Environment in Education program.

TREASURY/POSTAL (continued)

$1,250,000 added by the Senate for the Global Trade and Research Program at the Montana World Trade Center in the state of Senate appropriator Conrad Burns (R-Mont.). (This project is soon to be followed by construction of the Montana United Nations.)

$1,000,000 added in conference for a digital medical education project.

$250,000 added by the House for production of a firearms and ammunition guide by the Bureau of Alcohol, Tobacco and Firearms.

XIII. VETERANS AFFAIRS/HOUSING AND URBAN DEVELOPMENT/INDEPENDENT AGENCIES

The FY 1998 VA/HUD/Independent Agencies Appropriations Bill was a major conduit of pork, containing 305 items without budget requests. The pork totaled $683 million – more than twice as much as the FY 1997 VA/HUD pork total of $336 million.

One reason for this major increase was HUD's new Economic Development Initiative (EDI). The House granted the President's request of $50 million, noting that it expected HUD to focus EDI "on creating employment opportunities for former welfare recipients that live in distressed and blighted neighborhoods." The Senate approved $40 million, but earmarked $31.9 million for pet projects such as cultural, arts, and science centers, theaters and a college library. In conference, House appropriators suddenly added their own grants, and the total appropriations for EDI ballooned to $137 million, of which $97 million was earmarked for 121 specific projects. Congress also larded pork into several EPA accounts, especially wastewater grants.

Pennsylvania alone received 35 nonrequested projects worth $49.5 million from Sen. Arlen Specter (R), Reps. Joseph McDade (R) and John Murtha (D), and then-Rep. Thomas M. Foglietta (D). Pork sent to the Keystone state included:

$11,900,000 added by the House for projects in the district of Rep. McDade: $4,000,000 for a wastewater grant to Lycoming County; $4,000,000 for the National Institute of Environmental Renewal to start a monitoring system for watersheds near the Chesapeake Bay; $1,500,000 each for wastewater grants to Smithfield Township and the Pocono/Jackson Township Joint Authority; and $900,000 for environmental restoration at Lake Wallenpaupack.

VA/HUD (continued)

$4,500,000 added by the House for wastewater grants to 12 local counties, townships, and small cities in the district of Rep. Bud Shuster (R).

$3,450,000 added in conference for eight EDI projects in Pennsylvania, including: $1,500,000 for the Southeast Pennsylvania Consortium for Higher Education to do public policy research; $1,000,000 for the Pennsylvania Education and Telecommunications Exchange Network; $700,000 for an aquatic and fitness center in Lehigh Valley; and $200,000 for various park development projects.

$1,300,000 added in conference for EDI projects in the district of Rep. Murtha: $550,000 for library renovations in Indiana; $400,000 for renovation of a theater by the Eureka Coal Heritage Foundation, Inc., of Windber; $200,000 for construction of a pedestrian bridge in Barnesboro Borough; and $150,000 for "Friends of George C. Marshall" to develop the George C. Marshall Memorial Plaza in Uniontown.

The chairmen of the Senate and House subcommittees on VA/HUD appropriations, Sen. Christopher "Kit" S. Bond (R-Mo.) and Rep. Jerry Lewis (R-Calif.), were also very adept at handing out other people's money last year. Sen. Bond sent 15 nonrequested projects totaling $14,850,000 back to Missouri, and Rep. Lewis sent 11 nonrequested projects totaling $14,800,000 back home to San Bernadino and Inyo counties.

Pork in Sen. Bond's state of Missouri included:

$2,500,000 added by the Senate for a plant genetics research unit and the Delta Research Telecommunications Resource Center at the University of Missouri.

VA/HUD (continued)

$2,000,000 added by the Senate for the University of Missouri's Agroforestry Center to support the agroforestry floodplain initiative.

$1,000,000 added in conference for community development activities at LeClede Town in St. Louis.

$50,000 added in conference for the City of Wellston to revitalize its city hall.

Pork projects in Rep. Lewis's district included:

$3,000,000 added in conference for redevelopment of the Fifth Street Bridge in Highland.

$2,000,000 added by the House for an environmental education center in Highland.

$1,500,000 added in conference for academic and infrastructure needs at the Apple Valley Science and Technology Center.

$250,000 added in conference for the County of Inyo to plan and design the Lower Owens River project.

Other egregious examples of nonrequested projects included:

$26,300,000 added by the House for an ambulatory care addition at the Asheville VA Medical Center in the district of House appropriator Charles H. Taylor (R-N.C.).

$26,000,000 added by the House for environmental improvements at the Waco VA Medical Center in the district of House appropriator Chet Edwards (D-Texas).

VA/HUD (continued)

$16,900,000 added by the House and conference for six projects in the district of House VA/HUD Appropriations subcommittee member James T. Walsh (R-N.Y.), including $14,000,000 for water improvements at Onondaga Lake and $1,000,000 for the water quality management plan for Skaneatles, Otisco and Owasco Lake watersheds.

$12,000,000 added by the House and conference for six projects in the district of House appropriator Harold Rogers (R-Ky.), including: $3,000,000 for water needs in Williamsburg; $2,000,000 each for the Burnside and Morgan County Water District for water needs; and $2,000,000 for the Kentucky Highland Investment Corporation in London to assist businesses.

$9,750,000 added by the Senate and conference for 13 projects in the state of Senate VA/HUD Appropriations subcommittee member Barbara Boxer (D-Calif.), including: $2,000,000 for economic revitalization in the city of Compton; $1,000,000 for the Discovery Science Center in Santa Ana; $1,000,000 for a wetlands potable water reuse program for the city of West Palm Beach; and $500,000 for a training program in international commerce, environmental management and business ethics at the University of San Francisco's Center for International Business Education.

$9,550,000 added by the Senate and conference for six projects in the state of Senate VA/HUD Appropriations Subcommittee Ranking Member Barbara A. Mikulski (D-Md.), including: $2,300,000 for wastewater improvements in Queen Anne's County; $2,000,000 for the state of Maryland to revitalize toxic waste sites; $2,000,000 for biological nutrient removal on the Pocomoke River; and $1,500,000 for establishment of a National Center for Environmental Toxicology and Epidemiology at Johns Hopkins University.

VA/HUD (continued)

$9,000,000 added by the Senate for projects in the state of Senate appropriator Robert Bennett (R-Utah): $7,000,000 for a wastewater grant to the Ashley Valley Sewer Management Board and $2,000,000 for economic redevelopment in Ogden.

$8,750,000 added by the Senate and conference for six projects in the state of Senate Appropriations Committee Chairman Ted Stevens (R-Alaska), including: $3,000,000 for a leaking fuel tank demonstration project; $2,500,000 for a science learning center in Kenai; $1,500,000 for training facilities and equipment for Alaska One; and $1,000,000 for Covenant House in Anchorage.

$8,550,000 added by the Senate and conference for projects in the state of Senate VA/HUD Appropriations subcommittee member Tom Harkin (D-Iowa): $7,000,000 for wastewater and sanitary system improvements in Burlington; $1,350,000 for a distance learning center for community outreach and development at Buena Vista University; and $200,000 for cleanup of Five Island Lake.

$7,350,000 added by the Senate and conference for six projects in the state of Senate VA/HUD Appropriations subcommittee member Patrick J. Leahy (D-Vt.), including: $3,000,000 for a wastewater treatment plant project in Milton; $1,500,000 for the Lake Champlain management plan; $1,350,000 for renovation of the Paramount Theater in Rutland; $900,000 for the Lake Champlain Science Center in Burlington; and $250,000 for the Vermont Science Center in St. Albans.

$6,950,000 added by the Senate for five water improvement projects in the state of Senate VA/HUD Appropriations subcommittee member Larry E. Craig, (R- Idaho), including: $3,000,000 for Bingham County; $2,000,000 for the city of Rupert; and $1,000,000 for the Rosewell and Homedale areas.

VA/HUD (continued)

$6,300,000 added by the Senate for five projects in the state of Senate VA/HUD Appropriations subcommittee member Richard Shelby (R-Ala.), including: $2,000,000 for water system improvement in Washington County; $2,000,000 for the Cleveland Avenue YMCA in Montgomery to build a cultural arts center; and $1,000,000 for the University of South Alabama to establish the Center for Estuarine and Coastal Ocean Environmental Research.

$5,400,000 added by the Senate and conference for two projects in the state of Senate appropriator Conrad Burns (R-Mont.), including $5,000,000 for sewer system improvements in Missoula.

$4,600,000 added by the Senate and conference for four projects in the state of Senate VA/HUD Appropriations subcommittee member Frank R. Lautenberg (D-N.J.), including $2,000,000 for development of abandoned industrial sites in the city of Perth Amboy and $1,250,000 for the Stevens Institute of Business Technology to build a Laboratory of Business Innovation.

$4,500,000 added by the Senate for projects in the state of Senate appropriator Pete V. Domenici (R-N.M.): $2,500,000 for the New Mexico Hispanic Cultural Center and $2,000,000 for the Lovelace Respiratory Institute to establish a National Environmental Respiratory Center.

$4,400,000 added in conference for two projects in the district of House appropriator Ed Pastor (D-Ariz.), including $4,000,000 for a new columbarium at the National Memorial Cemetery of Arizona.

VA/HUD (continued)

$4,200,000 added by the Senate and conference for three projects in the state of Senate appropriators Slade Gorton (R-Wash.) and Patty Murray (D-Wash.), including $2,500,000 for the King County molten carbonate fuel cell demonstration project at the Renton wastewater treatment plant and $1,200,000 for expansion and refurbishment of the Pacific Science Center in Seattle.

$3,450,000 added by the Senate and conference for projects in the state of Senate appropriator Lauch Faircloth (R-N.C.): $2,500,000 for exhibit and program development at Discovery Place in Charlotte and $950,000 for construction of a facility at the University of North Carolina at Pembroke's Regional Center for Economic, Community, and Professional Development.

$3,250,000 added by the Senate and conference for five projects in the state of Senate appropriator Daniel K. Inouye (D-Hawaii), including: $1,250,000 for design of a granular activated carbon water treatment project; $600,000 for the West Maui Community Resource Center; $500,000 for the Ala Wai Canal watershed project; and $400,000 for the Maui algal bloom project.

$3,220,000 added by the Senate for enlarging and updating the Scarborough Library at Shepherd College in Shepherdstown in the state of Senate Appropriations Committee Ranking Member Robert C. Byrd (D-W.Va.).

$2,300,000 added in conference for five EDI projects in the district of House VA/HUD Appropriations Subcommittee Ranking Member Louis Stokes (D-Ohio).

$1,500,000 added in conference for the Geyserville Visitors Center for an intermodal transportation center in the district of House appropriator Frank Riggs (R-Calif.).

VA/HUD (continued)

$1,400,000 added in conference for revitalization and community service centers in Toledo in the district of House VA/HUD Appropriations subcommittee member Marcy Kaptur (D-Ohio).

$1,400,000 added in conference for four EDI grants in the district of House VA/HUD Appropriations subcommittee member Alan B. Mollohan (D-W.Va.), including $600,000 for the city of Grafton and $450,000 for the city of Parkersburg.

$1,000,000 added in conference for a multimodal transit center in Jackson in the state of Senate appropriator Thad Cochran (R-Miss.) and the district of House appropriator Mike Parker (R-Miss.).

$950,000 added in conference for completion of the Turtle Mountain Economic Development and Education Complex at Turtle Mountain Community College in the state of Senate appropriator Byron L. Dorgan (D-N.D.).

$900,000 for the Museum of Science and Industry in Chicago, Illinois, to restore a U505 submarine.

$700,000 added in conference for two EDI projects in the district of House VA/HUD Appropriations subcommittee member David Hobson (R-Ohio), including $500,000 for the Clark County Heritage Center in Springfield to develop the Old Marketplace.

$200,000 added by the Senate for renovation of the Albright-Knox Art Gallery in Buffalo, New York.

CITIZENS AGAINST GOVERNMENT WASTE PRESENTS

PIG BOOK "OINKERS" OF 1998

RECOGNIZING DOGGED PERSEVERANCE IN THE MAD PURSUIT OF PORK

The Treasure Island Award
to Sen. Daniel Inouye (D-Hawaii) for an $849 million bounty of pork since 1991.

The Half-Baked Alaska Award
to Sen. Ted Stevens (R-Alaska) for cooking up $477 million worth of pork since 1991.

The Tree Hugger Award
for $3.5 million ($45 million since 1985) in wood utilization research.

The Copernicus Award
to Sen. Conrad Burns (R-Mont.) for believing that the universe revolves around Montana with his $50 million in pork in 1998.

The Sushi Slush Fund Award
to Sen. Inouye for a $127,000 grant for aquaculture research in Hawaii including the cultivation of edible seaweed.

The Black Hole Award
to the Department of Defense for $3 million to build the Southern Observatory for Astronomical Research.

The Piracy on the Potomac Award
to Sen. Trent Lott (R-Miss.) for procuring a $720 million unrequested naval ship.

The Up Ship's Creek Award
to Sen. Stevens for $8.4 million in Energy and Water pork including $100,000 for Ship Creek.

The Cup Runneth Way Over Award
for the International Fund for Ireland's $19.6 million appropriation even though they still have $40 million in unspent funds.

The Golden Shovel Award
for the $3 million to the International Fertilizer Development Center.

The Desperado Award
for $200,000 added by the Senate to rock music has-been Don Henley's Caddo Lake Institute.

The Giving the Taxpayers the Shaft Award
to Sen. Arlen Specter (R-Pa.) for digging up $800,000 to build a historical coal library in Pennsylvania.

The Mighty Morphin' Power Porkers Award
to all appropriators who plundered the $137 million Economic Development Initiative Program.

Mr. GOSS. How many of my projects are in there?

Mr. SCHATZ. I don't recall that you are named specifically, Mr. Chairman, and I will spare the taxpayers the expense of having to read through the 2,100 projects that we found throughout the appropriations bills and not ask that that be put in the record, but that was a total of $13.2 billion.

And to follow on the discussion about the effectiveness of the line item veto, it may have had some impact because that number is 9 percent lower than it was in 1997. Of course for the prior 2 years, Congress increased pork by 16 percent, so it would have been difficult to continue at that level.

Citizens Against Government Waste's involvement in the issue of the line item veto goes all the way back to the Grace Commission, which called for the line item veto. In fact, they called it an item veto, not a line item veto, because they wanted it to go further than just a single line and restore what the original intent of the framers was and the way legislation used to be passed, which was in simple form and simple bills and allowed the President a lot more opportunity to go after these wasteful expenditures.

Quickly on the truth in testimony, I will also point out that Citizens Against Government Waste doesn't accept Federal dollars. We never have, and we don't want any.

Over the years we have witnessed many egregious forms of pork barrel spending. This year is no exception; despite the reduction in the amount of pork, there is more pork out there. There are 500 more projects. And what we find on occasion is that the Congress goes overboard. For example, in the United States Department of Agriculture cooperative research grants, the USDA asked for $10 million for these grants, and Congress put in $51 million. Many of these have virtually become entitlements. There is $3.6 million for wood utilization research, on which we have spent $45 million since 1985, and I would expect that they would have figured out what to do with the wood by now. There is also the State of Hawaii which receives $7 million under the Department of Defense appropriations for the Center of Excellence for Researching in Ocean Sciences. We have yet to find the centers for "mediocrity," and we have yet to find out why the ocean sciences are in the defense budget. This is courtesy of our friend Senator Inouye, who put in $5.4 million for a small business development center under the Department of Defense appropriation.

But the thing that really bothered us the most was the Economic Development Initiative, and this is where, while the President clearly did not use the veto enough, we think he really fell down on the job. The Economic Development Initiative is a new form of what was called special purpose grants, which was a prime example of what Republicans pointed out the Democrats were doing wrong when they won the Congress in 1994.

They didn't put in any special purpose grants for the first 2 years. And then in the past year, 1998 fiscal year, the President asked for $50 million in these grants. The House initially agreed to fund it and said that the Department of Housing and Urban Development should make its own decisions and spend the money on, quote, "employment opportunities for former welfare recipients that

live in distressed and blighted neighborhoods." That is fine. The Senate, however, put in $40 million and earmarked $32 million for cultural arts and science centers, theaters and a college library, hardly the kind of places where you would find employment opportunities, and very few of those were in distressed and blighted neighborhoods.

The House in conference suddenly thought this was a good idea. They put in their own grants, and the compromise—normally you would think the math would say somewhere between 50 and 40 million—was 137 million. Actually it was 138. The President actually vetoed $1 million worth of these projects. $97 million was earmarked for 121 specific projects: an art gallery in Buffalo; a college library in West Virginia; a pedestrian bridge in Barnesboro Borough, which is a real name in Congressman Murtha's district; and $150,000 for the Friends of George C. Marshall to build a memorial for George C. Marshall in Uniontown, Pennsylvania. Clearly local projects. The line item veto should be used for precisely these kinds of projects.

But the President did not have and really didn't talk about what kind of criteria he was using. Citizens Against Government Waste has criteria, the same seven points we have used since 1991. The Pork Busters Coalition, headed by Congressman Ed Royce and Congressman David Minge in the House and Senator McCain in the Senate, also has similar criteria. There is a lot out there. The President never bothered to find out what these criteria were, nor how to use them, and he got himself in trouble with the military construction funds where even his own Department of Defense couldn't explain to him why some of these should be vetoed.

But used effectively, the line item veto can work to eliminate wasteful projects from the budget. And $2 billion is not a bad start. Everyone wishes it were more, but it is something that points to the direction that you and the Chairman of the committee Mr. Solomon pointed out in your op-ed in the Washington Times. This is an important tool, it can be used effectively, and we hope that in particular now with the budget surplus, quote, unquote, in line, that Members will recognize that if the Supreme Court does not uphold the constitutionality, action should be taken promptly to restore the line item veto in a constitutional form.

The temptation—and I am not surprised at the findings of the National Taxpayers Union on the introduction of bills to spend money—is still to spend money in Washington. It requires great vigilance to prevent that from occurring. It requires greater vigilance to uncover a lot of the wasteful expenditures and to work with Members who are fiscally conscious to eliminate those expenditures.

Members used to say that the deficit is so large that a few million will not make a diference, but a few million really does make a difference. When you are talking about a $5 billion surplus or $10 billion surplus, an ill trade wind could blow that away, and we could end up in negative numbers. We are trying to spend money we do not have. The ISTEA bill is certainly a good example of that, where the Senate has promised to find the offsets later after they spend more money, and we hope that the House holds firm and doesn't follow suit.

But we are certainly better off with the line item veto than without. The lockbox provision that requires the savings to be used to reduce the deficit means that that money does not come back and get redistributed. And pork overall usually hides the consequences to taxpayers and the economy, so politicians overlook the financial hardships and economic burdens created by this form of government spending, assuming it is possible to help Peter without harming Paul.

When constituents look at a project in their own district, which may or may not be named after their Member of Congress, they see it as an example of the power of incumbency. They do not see it as something that represents tens of billions of dollars of expenditures elsewhere, and that is something that taxpayers need to understand as well. When a Member of Congress or a Senator comes home and says, look what we have done for your community, they should be asking, what have we done to the rest of the country? Where has this money come from? Would you take money out of your neighbor's pocket to build a pedestrian bridge in Barnesboro Borough, Pennsylvania? Probably not. The recognition that this is tax dollars and not some amorphous pot of money that the government owns is a giant step to bringing greater accountability to Washington.

The line item veto is about accountability. Criteria should be established at the White House, and we hope that the committee takes very seriously whatever occurs in the courts.

We appreciate being able to testify today. We will be happy to work with you as this moves forward to help get the line item veto in a proper form again if this is not held up, and also to work to ensure that it is used a little bit more effectively than it has been in its first year.

Thank you, Mr. Chairman. I am happy to answer any questions.

Mr. GOSS. Thank you very much. I hadn't a chance to see this year's sweepstakes results. But I always look forward to them.

[The statement of Mr. Schatz follows:]

Testimony of Thomas A. Schatz
President of Citizens Against Government Waste
before the
Subcommittee on Legislative and Budget Process of the Rules Committee
March 11, 1998

Mr. Chairman, and members of the Subcommittee, on behalf of the 600,000 members of Citizens Against Government Waste (CAGW), it is an honor to testify here today.

I come to this committee hearing pleased to represent all taxpayers in expressing their hopes that wasteful government spending will come to an end. Just yesterday, CAGW released its eighth annual *Congressional Pig Book*. CAGW identified more than $13.2 billion in Congressional pork during the first session of the 105th Congress, which reiterates the need for the line-item veto.

Over the years, we have witnessed many egregious forms of pork barrel spending, and this fiscal year is no exception. Take the United States Department of Agriculture, for example, which officially requested $10 million for cooperative state research grants in FY 1998, but appropriators raised the total to $51 million. Of this amount, $800,000 will go for the Food and Agricultural Policy Research Institute, which has itself acknowledged that its projects receive no evaluation to determine whether or not they meet any defined objectives.

$3.6 million is going to wood utilization research, on which taxpayers have spent $45 million since 1985. One would think they would have figured it out by now. Then there is Hawaii, that prolific state of pork barreling, which is to receive $7,000,000 under Department of Defense appropriations for the Center of Excellence for Researching in Ocean Sciences. Overshadowing this, however, is FY 1998's new flavor of pork, the Economic Development Initiative (EDI).

The president asked for $50 million in EDI grants, which the House initially agreed to, and allowed the Department of Housing and Urban Development to make its own decisions to spend the money on "employment opportunities for former welfare recipients that live in distressed and blighted neighborhoods." The Senate approved $40 million, but earmarked $31.9 million for cultural arts and science centers, theaters and a college library. The House, in conference, suddenly added its own earmarks, and EDI grants ballooned to $137 million, of which $97 million was earmarked for 121 specific projects. This is simply a perversion of the budget process, Mr. Chairman. Even worse, President Clinton refused to use his line-item veto to wipe out this massive waste.

CAGW was organized 14 years ago as a direct outgrowth of President Reagan's Private Sector Survey on Cost Control, more commonly known as the Grace Commission. Since CAGW's founding, we have helped save taxpayers more than $486 billion from implemented Grace Commission and other CAGW waste-cutting recommendations. The Grace Commission provided an essential blueprint to control federal spending, including the much-needed line-item veto. Mr. Chairman, I ask for unanimous consent that CAGW's *1998 Congressional Pig Book Summary* and the Grace Commission's findings on the line-item veto be included with my testimony for the record.

In January 1997, legislation granting presidential line-item veto authority became law. This landmark victory for taxpayers gave the president a key weapon in the fight against wasteful spending. If used properly, the line-item veto has the potential to be an effective tool for eliminating wasteful projects from the budget. Much of the superfluous, wasteful spending identified by the Grace Commission was embodied in legislative riders attached to appropriations bills. Unfortunately, President Clinton's use of the line-item veto has been grossly inadequate – he cut less than one-tenth of one percent of total appropriated funds.

Mr. Chairman, pork is the appropriation of public funds for a very narrow gain. Grabbing tax dollars for the special benefits of friends, supporters and campaign contributors unfortunately remains a way of life on Capitol Hill.

For decades, Washington dismissed pork as a minor problem in the grand scheme of fiscal policy. However, pork not only warps congressional attitudes, it distorts the incentives that shape the outcome of the appropriations process. It also distracts politicians and the American taxpayer from the larger problem – the uncontrolled growth of entitlement spending.

Entitlement, or mandatory, spending is indeed the most out-of-control portion of the federal budget. However, domestic discretionary spending, which funds such programs as energy research, water projects, and highway construction, has also experienced explosive growth.

With the passage of the Balanced Budget Agreement of 1997, politicians can no longer use as an excuse, "the deficit is so large that a few million won't make a difference." With a budget surplus in our reach, a few million here and a few million there can, and does, make a difference. If the spending caps in the BBA hold, as many have urged, wasteful spending will have to be cut. A chief executive who is serious about keeping the budget in balance, or even saving the surplus for Social Security as President Clinton has pledged, can use the line-item veto to advance that goal.

Mr. Chairman, you joined Rules Committee Chairman Gerald Solomon last November in a *Washington Times* op-ed, noting that the line-item veto is working the way it was intended by boosting accountability in Congress and at the White House. You said that it is reaping cumulative budgetary savings of $1.9 billion. We agree that a first step had to be taken, and that specific programs can now be scrutinized more closely, but we hope taxpayers understand how much more is left to be done. Certainly, we are better off with the line-item veto, in particular the lock-box provision that requires the savings to be used to reduce the deficit, than without this vital power.

Many members of Congress view government as a vast, wonderful instrument for doing good. This surely has something to do with their own desire to help people. But it is also related to the cost-benefit structure of government spending programs. Most programs confer direct, visible, concentrated benefits on identifiable individuals or groups while imposing indirect, hidden, or diffuse costs on taxpayers and the economy. As a consequence, politicians easily overlook the financial hardships and economic burdens created by government spending. Many assume it is possible to help Peter without harming Paul – as if the money for programs did not first have to be taken from taxpayers. Let us be clear on this point: the money Congress spends does not, nor will it ever, belong to the government – it belongs to the American people.

The false philanthropy on Capitol Hill is reinforced each time a lawmaker wins kudos for bringing home the bacon. Indeed, the biggest spenders are quick to congratulate themselves on the "generosity" with which they spend other people's money. Thanks to pork, Members of Congress learn to spend wastefully – and with a good conscience. The mentality that gets you a Lawrence Welk museum gets you a $5.5 trillion national debt.

The line-item veto is one answer to eliminating pork, but the effectiveness of the line-item veto depends on the precision with which it is used. Establishing objective criteria to identify pork is crucial in determining what projects need to be exorcised from a spending bill.

CAGW's seven-point criteria system is an objective and effective tool. All items in our *Pig Book* meet at least one of the following criteria, while many meet several: requested by only one member of Congress; not specifically authorized; not competitively awarded; not requested by the president; greatly exceeds either the president's budget request or the previous year's funding; not the subject of congressional hearings; or, serves only a local or special interest.

The president should use established criteria, such as CAGW's, because the credibility of the line-item veto is predicated on the president having such guidelines for making rescissions from spending bills. The debut performance of this power clearly illustrates that the president does not have established criteria, has neglected to clearly rationalize what he is doing and why, and has ignored expert advice from porkbusters both on and off Capitol Hill. CAGW identified, and GAO reports have confirmed, that if

the president had received line-item veto authority as early as 1990, at least $10 billion a year could have been cut.

The president barely drew his veto pen in 1997, and ineptly used his authority, wiping out a scant one-tenth of one percent, or $483 million of appropriated funds. With the veto override of $287 million in military construction funds, that figure becomes even more insignificant.

The line-item veto will become more effective only if the president takes his authority, as well as the necessity to use it, seriously. The power that Congress has laid at his feet must be thoughtfully utilized.

Let me briefly address the constitutional debate over the line-item veto, which is currently under attack in the courts for providing a presidential power deemed by some to be unconstitutional. In his Sunday, March 8th column in *The Washington Post*, George Will stated that the line-item veto effectively shreds the separation of powers since the use of the antecedent "it" in the Constitution refers to the whole bill, not just bits of it. CAGW disagrees. The Grace Commission report had this to say, "...[line] item veto authority over appropriations bills could provide the 'effectual' veto power intended in Article I of the Constitution which provides that:

> Every bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a law, be presented to the President of the United States; if he approves he shall sign it, but if not he shall return it, with his objections...."

The term "bill," as it is used in Article I, had a much narrower definition than the one it holds today. Early in our government's history, each bill dealt with a single, specific subject, which was clearly defined in the title of the legislation. During this time, a president could veto all the proposed legislation on one particular subject by vetoing a "bill." Over the years, however, the Congress has increased the scope of unrelated subjects assembled together in a bill, until we get what we have today: appropriations bills that cover numerous unrelated cabinet departments, agencies and programs. In so doing; the president has actually been deprived of the authority to selectively veto legislation on a single subject.

Due to the improbability that Congress will revert back to limiting each bill to one singular subject, the line-item veto is the most effective way of restoring the "selectivity and scope originally intended for the veto power it provided." In addition, CAGW views the line-item veto legislation within the context of restoring the president's impoundment power, which he held prior to the Budget Act of 1974.

In closing, Mr. Chairman, CAGW is hopeful that the line-item veto authority will remain with the president and the monetary burden for needless, egregious forms of government waste will be lifted from the backs of hardworking American taxpayers. Mr. Chairman, and members of the Subcommittee, I thank you for allowing me to testify this morning, and I welcome the opportunity to answer any questions you may have.

Mr. GOSS. I think this testimony has been very interesting. I would agree with you, there is a different mindset. It isn't exactly like we have won the lottery and we have a huge amount of cash to throw around, but it is a little bit like that. And I note that most of the debate is taking place over spending a surplus which doesn't yet really exist. It may exist on paper or in somebody's mind.

I think that reinforces the idea that given an opportunity to spend, or go out and do a project, or get something going, or starting a new service, or rushing in to do something that the government must do, that eternal vigilance is the answer, and that is why I like having a tool in place, regardless of how it is used. But the purpose of this hearing is more to judge the question of how the first year of this particular tool has gone, and I think you have all added something important for us.

Dr. Berthoud, your observation on behalf of NTU that less than half of the amount, I presume, of spending decrease bills has been put in this year is a startling revelation. I was not aware of that. It is something that I think needs some attention. I don't think it is a negative consequence of the fact that there is a line item veto. I think it is a negative consequence of the fact that people are talking surplus. Do you agree with that?

Mr. BERTHOUD. Absolutely. And I would say, as you have indicated, I think we have got to shift our focus very, very fast. For many years we have been a major supporter of the balanced budget amendment and against deficits, which is a very important thing to do. But at the same time we have concurrently also been saying that we have to focus on aggregate taxing and aggregate spending, and the average worker has to work until May 9th just to pay their taxes. And just because we have come to the happy era for several years of surplus politics, I don't think we can take our eyes off the fact that the tax burden is still far too high on the average American and the average American family, and government is in control, in our view, of far too many resources.

Mr. GOSS. I don't imagine any of you believe any more than I do that balancing the budget is not going to be a huge effort every year. Whether or not we get a surplus, I can tell you now that the pressures are so great even with the budget numbers that the various appropriators and authorizers—that there is agony already. I don't know what we are going to do, but I can tell you that it is going to be difficult, because now we have advertised the surplus in this balanced budget, and now we are sort of in a box, and I can tell you there is nowhere near enough money to do all the things that we want to do. So that means we are going to have a very interesting exit strategy, adjournment strategy, for the 105th.

The second area that I wanted to talk to particularly, Mr. Moore and Mr. Schatz, you talked to it both, and this is the area, I think I know how we did up here on the Hill with this. We have heard a little testimony about the White House not doing as well as they might have with it. And I think this goes to the criteria question. I would welcome any observations you would have, and I mean this in a positive way, about whether we should be looking at trying to refine criteria to suggest to the White House or to take further action on in some appropriate form with regard to how they do their

piece of the job. We are not trying to micromanage the Presidency, but we are trying to give the President a tool. But we would like him to use it, and obviously we ought to suggest some criteria.

Mr. SCHATZ. That was really the big question under the Economic Development Initiative when they went from $50 million to $97 million in earmarked funds, and he vetoed about a million dollars. What made them different from the other $96 million that was not vetoed? There was really not a clear explanation.

We have criteria. We include areas such as whether or not the item was a subject of a hearing; whether it was competitively awarded; whether it was only approved by the House or the Senate, in other words not both; and whether it was requested in the President's budget or greatly exceeds the President's request for the prior year's amount; and whether it serves only a local or special interest, which is probably the least objective.

We certainly do get comments from Members saying, we don't necessarily have to follow the President's budget, but if your project is good enough, we are talking about $13 or $15 billion a year that we identify under this process, then you can go to the agency and you can say that wood utilization research is a good idea and demonstrate how. And they should be respectful enough of that to say, this is a national priority, this $3.5 million a year, let's put it into the President's budget and go through the House and Senate authorizing committee and the appropriations process, and then we will have some final number on a project like that. That would be helpful, and I think would justify some of what the President is doing.

We also have a criteria for whether or not the project is authorized. We now find the appropriators getting smarter about putting in appropriations subject to authorization, so they figured out a little bit how to get around it. We are trying to get some control on this process. We are also trying to give the President a useful tool and one that people will look at when he uses it and that should really have more of a depressing effect on the amount that goes in the first place. So a 9 percent drop is a good step in the right direction, but if he had been more clear about how he was going to use it, that number could have been a lot higher in terms of reduction.

Mr. GOSS. I guess my question is how do we help the President do that? I know accountability is a very strong tool, but how accountability comes is another question.

Mr. MOORE. Well, I am not one who normally defends the President, but let me say this in defense of the first year. I think the fact that this was a new tool, and I think the administration has made this point this was a new tool, and they didn't want to go out and just start using it very aggressively. I think that made sense to use it judiciously, and they certainly used it very judiciously in the first year. But the fact of the matter is that it is reasonable to anticipate that the line item veto will be used more aggressively in future years than it was in this first year.

I think that Tom makes an important point that one of the reasons why setting and establishing a clear-cut, concrete criteria about here are the types of projects that we are going to line-item-veto if they come to our desk, by doing so, you create a deterrent value, and that is an important point. What we hope to see at Cato

is that eventually Members will not even put these projects in the bills because they will realize that if they come to the President, they will simply be line-item-vetoed. But if the Members do not know why—for example, just another good example is the energy and water bill that had 423 unrequested projects, and the administration line-item-vetoed eight of those. Those eight deserved to be line-item-vetoed, but there is nothing substantively different about the others that he let slide through. I think that is an important point. I think it would be very helpful, for example, for you, Mr. Chairman, and Mr. Solomon, to request from the White House more concrete criteria so that you can do your job better.

Mr. SCHATZ. Actually, Mr. Chairman, it is in a sense the origin of the Congressional Pig Book, in 1988 for the first and last time, when Jim Miller was head of OMB, they produced a long list of items that they considered wasteful and pork barrel items, and we developed our criteria based a lot on what they had used at that time. The Appropriations Committee made it very clear they didn't want to hear about that again, and they didn't do it, and that is one of the reasons why we started doing what we did in 1991. But they did have a similar approach to these items, and it did come out of the Office of Management and Budget.

So there is some precedent for the White House taking a look at the projects and developing criteria. So a meeting—a suggestion in this report, again, I think all the groups here are very happy to sit down with them and work with them.

Mr. GOSS. You mentioned the words "local interest" and "local project." The problem with a lot of this, of course, always is what is a very critical lifesaving project in my district is regarded as pork by the guy the next district up; and what criteria we are using to label true pork versus what is a piece of legislation that didn't come through, and the legislator had to fight like heck to get something in that has some merit, and it is the proper Federal expenditure as opposed to local expenditure. Those areas are not clear in anybody's mind. Obviously in Washington this is the idea that the money is here, go get it, it doesn't hurt to try. And it is that line that is going to be very hard to make a working judgment on.

Mr. SCHATZ. That is probably the criteria that would be hardest to use, and it is one that we don't usually use on its own. We combine it with something else. But you could look at this George C. Marshall project and say George C. Marshall was an important historic person, but this is a plaza in a town in Pennsylvania. If everybody honored their local heroes or got a pedestrian bridge in their local borough, the problem will explode.

You can identify at some level. The National Park Service has criteria, and Steamtown is one of the great examples of pork over the years in Pennsylvania.

Mr. GOSS. Did my staff ask to you say that? We have had a debate about that very worthy project in my office several times.

Mr. SCHATZ. That was a situation where the area had absolutely zero historic value, and the Smithsonian said that, and this was something that Mr. McDade managed to get through over many years.

So you can identify them. It is not quite "you know it when you see it," but it is something similar to that criteria.

Mr. MOORE. It would be nice to see the line item veto not just used for pork, and Citizens Against Government Waste has done a marvelous job with its Pig Book identifying that.

Mr. SCHATZ. $70 billion since 1991.

Mr. MOORE. But I would like to see the President use it aggressively to take out whole programs. A program like the Agriculture Market Access Program is an absurd program, which is really offensive to taxpayers, and you could go down the list and look at all the groups that get funding, Ernest and Julio Gallo and Dole Pineapple and so on. But why not just line-item-veto out that entire project, and if Congress gets the two-thirds votes in both Houses to override that, fine. But I just believe that in addition to pork, I would like to see whole programs eliminated with the line item veto and Congress having to make the case for why those programs exist.

Mr. GOSS. As you know, we did talk a lot about mandatory spending and limited tax benefits. Those were definitely pillars in this thing. And most of the focus, obviously because of the accountability, the sensational aspects of the accountability side, generally tend to go to the pork barrel side.

Mr. Hastings?

Mr. HASTINGS. I may be unique, and I am probably the only Member of Congress who doesn't have any of those pork things or wasteful spending. Maybe not.

Mr. MOORE. We will have to check.

Mr. GOSS. Is there any Federal money going into his district at all?

Mr. HASTINGS. Just a couple of observations, and while this hearing, I know, is on the line item veto, there is certainly a common thread in everything that you are saying, and that is trying to find a means to control spending growth and allowing hopefully the taxpayer to keep more of his tax dollars. I think—listening to you, I think you would all agree with that. But just a couple of observations.

Dr. Joyce mentioned—and I came in late, and the two of you were here when he testified—he suggested that there is a gray area about the capability of the line item veto if we are in a surplus situation. My observation was that the line item veto should be there regardless whether there is a surplus. Would you all agree with that?

Mr. MOORE. Yes. We still have a $5 trillion debt.

Mr. BERTHOUD. Yes.

Mr. HASTINGS. I hadn't heard that before, and I wondered if you would agree with that.

I know this is not on the line item veto, but maybe I want to extend this to another area. We are in a unique situation now where for the first time in 30 years we may be in balance. There are some who would argue about that. A lot of States have a balanced budget requirement, even though those States, their government spending continues to rise, even though they are in a balanced situation.

I have always been of the opinion the only way we are really going to control spending is to control the revenue stream. Now, if that is the case, are any of you looking at other areas by which to control the spending? I know several States have used some unique

ways where State spending can only grow at the rate of inflation and population, a combination of that. Have any of you looked at anything like that or propounded anything like that?

Mr. BERTHOUD. If I can say, Mr. Hastings, we are very supportive of a variety of structural mechanisms that change the budgetary process, be it supermajority requirements that we think would be very useful. Again, we have for many, many years been supportive of the balanced budget amendment. We think that the BBA will have positive effects on deficits, obviously, but we also believe, as Milton Friedman said a number of years ago, that if Congress and the President don't have the ability to use deficit spending—spending is easier when you are putting it on a credit card, and I think deficits enable Congress and the President to spend more. So we think that will have a spending restraint mechanism.

Let me make an observation on the State experience with the various mechanisms, line item veto, tax and spending limitations. And there has been some discussion with your previous people here testifying this morning, it is certainly my sense that different States have had different experiences with the mechanisms. And to me, the most important thing that it comes down to is how well the rules and different mechanisms are written, be that an expenditure limitation or a line item veto.

You were talking about Washington's line item veto, which has given the Governor out there many more powers than this does to the President.

Certainly, my read of the different studies of mechanisms in the States is that the critical issue is how well or poorly it is written, and then afterwards whether the members of the legislature or the Governor can come in and find loopholes. So with these mechanisms, my reading of the States is that these mechanisms had an effect that's limited, and not all–encompassing, but positive, particularly when they are written well.

Mr. MOORE. Let me just add to that, I hope the balanced budget amendment comes up again. And the fact of the matter is maybe now is the time to take the Democrats up on their offer and say, okay, let's do the balanced budget amendment without Social Security. That would force us to cut 50 to 100 million more in spending and stop robbing the Social Security Trust Fund.

The fact that we have a budget surplus right now doesn't lessen in my mind, and I think I can speak for John on this, our zeal to see a balanced budget amendment passed. It should be easy to do it right now.

Second of all, John is absolutely right, two-thirds supermajority, you are seeing a lot of States move towards that. If you are interested in finding out more about that, Mr. Hastings, we did a study looking at—comparing some of the States that have the supermajority requirement versus the ones that don't, and we are finding that it is a pretty successful way to impede tax increases.

Let me say that I wholeheartedly agree with the statement that you made. After watching the first 3 years of this Republican Congress, I am convinced the only way we are going to bring spending down is to cut taxing. That is why my heart aches when I see Newt Gingrich say maybe we won't do a tax cut this year.

A couple of other things, the dynamic scoring of tax cuts. We have been talking about this. We got a terrible score on capital gains last year. One of the reasons that the revenues are up is we cut the capital gains. CBO said that we would lose revenue.

And finally, we are still using current services baselines in this town, and that makes my heart ache to see that. When I see Republicans who for 20 years said this is so deceitful to be using current services, last year when many of your colleagues were trying to sell the budget deal, you were saying, oh, this is going to cut $300 billion in spending, and then it went up every year. So let's get rid of current services budgeting.

Mr. SCHATZ. I would agree with a lot of what my fellow witnesses have said this morning. One of the balanced budget proposals—I believe it was Senator Kyl's which would have established a 19 percent level for both taxes and expenditures. Of course, one of the reasons we have the budget balanced and balanced now is because we have a lot more money. Spending is growing slower, but we simply have more revenues, and that is how we have come to this situation. If I am overpaying anything, I want the money back. I don't want the money spent. So tax cuts to us still make sense, and tax cuts would force more spending cuts in Washington.

Taxpayers have sent more money, and that is what is being used to balance the budget. They should get it back, and that will restrain growth further.

The budget process certainly needs reform. I know there is work ongoing in that area. There has been a pretty solid proposal. Congressman Cox and Congressman Largent are working on that. There is some Democratic support. That is something that does need to be done. If we did have, for example, a budget resolution that was signed into law, and we changed to the two-thirds majority to raise taxes. There are things that do need to be fixed. The Budget Act of 1974 was a bad piece of legislation. It is now 24, almost 25 years old, and it is time that that gets examined as well.

Mr. HASTINGS. One other thing. Talking about the budget and the 3 years that I have been here, it seems to me the process starts where the authorizers and appropriators start the hearing process, and we have the fight between them going through the whole process. And finally, we are exhausted on the floor after we finally pass out of the House and the Senate takes it up, and then they lay exhausted as they finally get it done. And then we go to conference and fight amongst the President, and finally sometime in mid-October or November, depending, we are absolutely totally exhausted. And finally we got it done, and then the next year we come back in January and start the whole process all over again. And so it seems me one of the solutions to that is a biennial budget. If there is going to be any heavy lifting, it is going to be done the first year.

What is your view on the biennial budget?

Mr. SCHATZ. Well, it was the recommendation of both the Grace Commission and Citizens Against Government Waste. And, of course, the second year of that 2-year cycle was supposed to be used to use the oversight powers of the Congress. We now have the Government Performance and Results Act, and I know it is being taken very seriously, and we hope that it will be effective in bringing more accountability to the departments and agencies.

That requires time. One of the reasons there are 163 job training programs is that it is easier to pass a new one than to figure out if the current ones are working, in part because there is not a lot of time.

So a biennial budget is, I think, a wonderful idea.

Mr. MOORE. It is interesting that you should mention that, because in the past I have not been an enthusiastic supporter of that idea, but I think I am changing my mind. This year is a good example. You passed a budget last year. I was not wild about that, but it is in place. And face it, this Congress has no agenda. The fact is if you had a biennial budget in place, you could basically adjourn for this year. And idle hands are the devil's workshop, and you are going to pass a lot of mischief this year because policy work abhors a vacuum. You are going to see spending issues coming through. The Texas Legislature is not in session this year, and there is no reason for them to be in session.

Maybe a biennial budget might be a good idea. Especially one big advantage of a biennial budget is if you passed the budget in the first year of the 2-year, the nonelection year, then it really reduces the temptation to come along the second year; this is an election year, I will bet you a dime to a dollar that come October you are going to see a flood of new spending passed right before you all go out to run for reelection. The temptation to do that would be substantially reduced if you set the budget in place 18 months before the election, not 2 months before the election.

Mr. BERTHOUD. I think I would agree with most of what has been said on this. I would offer, I think, perhaps a caution. Some reference several times today have been given to the Budget Impoundment Control Act of 1974. I think if you go back, certainly a lot of people who voted for that had goals of a greater rationalization of the process, thinking more about macro targets and avoiding perhaps some of the chaos that you are talking about.

So certainly to the extent that that mechanism did not transcend those problems, I would at least offer that as possible evidence that there may be—your hope for resolution of these problems may not be as great as you might expect.

Mr. HASTINGS. Well, it seems to me that it gives the opportunity in the second year to at least look at some of the programs as you alluded to and say, gee, do they work or not. And the beauty is if you get into a political fight in the second year, from my perspective, say, screw it, we will just go home, and so that budget will take you through the next year. That has happened in several States. And we have a supplemental budget this year, and we have annual budgets submitted. That seems like an oxymoron to me.

Well, I know I am going far beyond the line item veto, but I thought we ought to talk about it. Mr. Chairman, I appreciate it.

Mr. GOSS. Thank you. It is true we are supposed to talk process here, but the process leads to consequences that we are talking about.

I won't talk about the biennial budget because we are doing budget review under another agenda in this committee, but I would point out that we would only have half as many line item veto savings if we did biennial budgeting. That is something to think about. Of course, that doesn't follow, but it is good math.

The question I wanted to ask is this: Do you believe that the procedures in the Line Item Veto Act that define the President's authority and that provide for congressional response are sufficient to protect the prerogatives of Congress for budgetary decisions?

Mr. BERTHOUD. Absolutely.

Mr. SCHATZ. Yes.

Mr. MOORE. There is no doubt on that.

Mr. GOSS. Three yeses on that? That is an important point and one that a number of people have asked.

There is another that I wanted to ask Dr. Berthoud. There are a couple of other questions. One of the things that has come up is whether or not this whole thing has been worth it; that the savings are so slim and that the argument is so strong and the congressional separation of power and so forth, that is this thing worth keeping going? Any answer to that?

Mr. BERTHOUD. Absolutely. If I in any way belittled the savings and progress or benefits of this bill, if the glass is half empty or 90 percent empty, it is still 10 percent full. And if we achieved a couple of hundred million dollars in savings, that is a couple of hundred million we would not have otherwise. And Tom and Steve have done a good job making the case that this tool should be used more expansively, and Tom's Pig Book is a great resource. But, no, it has been worth it. And perhaps as Steve suggested, at the other end of Pennsylvania Avenue, a different President, perhaps Ronald Reagan or someone of like thinking, might make much more beneficial use of this tool.

Mr. SCHATZ. If I could add one thing to that, in looking at how it was effective, the reason we knew it was working well is because the first thing that occurred was the Members whose projects were cut got upset about it.

Mr. GOSS. I consider that an extraordinarily predictable and nonrevealing result.

Mr. SCHATZ. Except a number of them were supporters of the line item veto.

Mr. GOSS. I know.

Mr. SCHATZ. And that said this was working.

The complaint was the lack of criteria, which was somewhat legitimate, but on the other hand, everyone said, let's give it to a Democratic President. We do not care who is in charge. We just want that power to be given, and the power is the power, and the chips are going to fall where they may.

Mr. GOSS. Those who began to swoon and faint over the list when it came out I don't think changed my view at all of where we are and what we are about here. Let me ask another one that is a little bit more important than that, and that is this question about a misuse of power or political blackmail or inappropriate strongarm. Do you have any evidence of that?

Mr. SCHATZ. I had seen one article or a few articles in relation to the fast track. I believe there were a handful of Members. That kind of activity, however, goes on in a lot of things in terms of projects and programs. So it is not, again—well, there is no evidence that the President did not line-item-veto $97 million worth of economic development initiatives because he was making deals with all the members of Appropriations Committee.

Mr. MOORE. One of the concerns that would be a natural concern would be whether the President is using it in a partisan way and just going after Republican projects, and I looked down the list, and it looked like it was pretty—that Democratic districts received line-item-vetoed projects to the same extent the Republican projects did. That is something to keep a eye on, but I don't think there was any evidence of that in the first year.

Mr. GOSS. My view is that I was a little puzzled by some of the things that the White House did, but I more or less believe it was because they didn't have much experience with this and frankly didn't do their homework well enough. Whether they had enough time is another area that I want to look at, but I think it was a situation of competence and not partisanship.

Mr. MOORE. I think the White House has acknowledged that they didn't have time to go through all of these bills, and this was a new thing, and they didn't know quite well what we were doing.

Mr. GOSS. I don't think the White House has suggested that they don't wish to have this tool. On the contrary, I think they are going to defend it. I think we are all on the same track here, and my concern is what we have learned from the first year. And admittedly it is not long enough to get the full picture, but at least to see if we are going down the right road and we are getting the consequences that we thought we were going to get, or if there is anything else that we need to be alarmed about. And based on your testimony, I think we are going the right way, and we hope to see a little bit more of it. Is that a fair conclusion for what you all are saying?

Mr. MOORE. Yes.

Mr. BERTHOUD. Yes, Mr. Chairman.

Mr. GOSS. I thank you for your time and your input and your written statements, your commentary. And as you know, this is not going to be the only time we talk about this. And I appreciate your participation today.

Let the record show that we have completed the witness list for today, and let the record also show that we will tomorrow, March 12, 1998 at 9:30 a.m. in this very place convene our second hearing on this which will focus on the experience and the expertise of our fellow Members. We have a long list, and we should have further exciting information to consider in our subcommittee on this important subject.

Thank you. We stand adjourned.

[Whereupon, at 11:30 a.m., the subcommittee was adjourned.]

THE LINE ITEM VETO AFTER ONE YEAR: THE PROCESS AND ITS IMPLEMENTATION

Thursday, March 12, 1998

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON LEGISLATIVE AND BUDGET PROCESS,
COMMITTEE ON RULES,
Washington, D.C.

The subcommittee met, pursuant to call, at 9:30 a.m. in Room H–313, The Capitol, Hon. Porter J. Goss [chairman of the subcommittee] presiding.

Present: Representatives Goss and Solomon.

MR. GOSS. The meeting will come to order. I will note that there are two members present, Chairman Solomon and Mr. Goss.

Good morning. Today we begin the second of our hearings on the line item veto. Yesterday we heard from a variety of distinguished public witnesses and today we will take testimony from a broad range of Members of Congress with expertise and interest in this important topic. I am pleased already to welcome Mr. Murtha, as well Chairman Solomon here, for his opening remarks. I am delighted that we have been able to foster such a timely discussion about the implementation and procedures of the Line Item Veto Act.

As my colleagues heard me say yesterday, I have strong personal interest in the lessons learned from the first year of the new law's existence. It is my very strong view that Congress carefully considered the implications and the specific constraints of the Line Item Veto Act before its final passage back in 1996. I firmly believe that we acted properly and judiciously in delegating a carefully defined authority to the President, providing him an important budget discipline and accountability tool.

As I said yesterday, the matter of the act's constitutional merit will be considered by the Supreme Court this spring and is therefore not a matter for this committee to decide. We all knew from the outset that this topic would be fodder for the high court's deliberations and I don't think anyone is surprised that we are headed in that direction now.

I would note, for those who may be interested, that I am joining with our distinguished Rules Committee chairman, Mr. Solomon, and the chairman of the Government Reform and Oversight Committee, Mr. Burton, in filing a friend of the Court brief in support of the Justice Department's appeal on the Line Item Veto Act case. I truly believe that this act represents a proper delegation of authority by the Congress to the President, and I hope the Court will come to that conclusion.

Pending that ruling, however, it is the responsibility of this subcommittee to review the act's functions during its first year in existence and that is what we are doing here today. We hope to focus on the process by which the law has been implemented and the way in which the congressional response has functioned. I welcome all the members here today and note that we have tried to schedule witnesses to accommodate members' schedules, while attempting to retain a balance between Republican and Democrat points of view.

At this time, I am happy to recognize any of my colleagues for brief opening remarks. Since there are none present other than myself, we will pass on that for the moment.

Our first witness is our very distinguished chairman, the gentleman from New York, Mr. Solomon. We are all indebted to him for his extraordinary persistence in bringing about the line item veto, his diligence in ensuring that this law was carefully considered and his continued interest in imposing and maintaining budget discipline has been an inspiration to all of us. I say that sincerely as I am one of the cosponsors of his more rigorous conservative budget, which sadly did not pass.

Mr. Solomon, the floor is yours.

STATEMENT OF HON. GERALD B.H. SOLOMON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. SOLOMON. Mr. Chairman, in regard to the more rigorous budget, no one ever accused you of not having courage because it takes courage to support legislation like that, which really does bite the bullet.

Let me just thank you, and your subcommittee, for the opportunity to testify this morning on a matter of mutual and great importance, the line item veto, which you worked so diligently along with me and our staffs as well to drag the Senate kicking and screaming to an agreement on this legislation.

And I hate to take up the time of my good friend, John Murtha, sitting behind me waiting to testify, but I do want to go into some detail on this matter.

Mr. Chairman, on December 1, 1873, in his annual address to Congress, President Ulysses S. Grant called on Congress to authorize the executive, and this sounds a little confusing, but he called on the executive to approve of so much of any measure passing the two Houses of Congress as his judgment may dictate, without approving the whole, the disapproved portion or portions to be referred back to the House in which the measure originated.

One hundred twenty-two years later, on February 6th, 1995, coincidentally, on my hero's (Ronald Reagan) birthday, the House passed the Line Item Veto Act as the second plank in the Contract with America, and after a seven-month House/Senate conference, President Clinton signed the bill into law on April 9th, 1996.

By this act of bipartisan cooperation, the taxpayers had empowered their government with another arrow in the quiver of budget discipline. As a result, spending is lower, accountability is higher, and responsibility is more clearly defined. The line item veto has surely delivered as was advertised.

As we reflect on the 15 months of the operation of this new law, I want to focus, I think, on three points. First, the line item veto

has increased accountability. The budget process in all of its many parts now takes into account the presence of the line item veto.

Good morning, John.

Mr. LINDER. Good morning.

Mr. SOLOMON. Whether it be the Appropriations Committee writing discretionary spending bills, the Budget Committee and Ways and Means Committee devising reconciliation bills, or an authorizing committee creating a new mandatory program, Congress clearly recognizes the impact of the line item veto. New discretionary spending, new entitlement spending, and limited tax benefits must now overcome a new obstacle to their enactment. To paraphrase Alexander Hamilton, the oftener these measures are examined the less likely spending that is not in the national interest will occur. So the line item veto does make it harder to spend taxpayer dollars unaccountably.

Second, the Federal Government's spending is lower as a result of this law. While, as was indicated yesterday, it is impossible to measure the deterrent effect of the line item veto, actual dollars saved have been measured. According to the OMB, the total savings of the President's cancellations before recent court and congressional actions was $1.9 billion and $798 million after such actions. According to CBO, the total savings before the actions overturning some of these cancellations was $937 million and after were $569 million in savings to the taxpayer.

To those who claim that the line item veto's savings are very small as a percentage of the total budget, I would make one observation. Without the line item veto, the government's spending would be higher and because of this law it is lower. That is a fact. Regardless of who scores it, taxpayer dollars, in fact more than a half billion dollars, have been used to reduce the deficit. And after all, that is what we were all out there working for.

The act's dedication of savings from cancellations has worked to guarantee the American people that this budgetary tool would be used to reduce the deficit.

This lockbox has shifted the spending bias in this portion of the budget process.

Third, the line item veto has increased government responsibility. This carefully constructed and balanced delegation to the President highlights the spending decisions of both the President and this Congress.

Good morning, Mr. Frost and good morning, Mr. Hastings.

After 82 cancellations, many questionable spending decisions were drawn out into the sunshine for further examination. After further review, 38 were reinstated by Congress, and one was overturned pursuant to an agreement before a U.S. district court.

The bottom line is that the line item veto process maintains the budgetary prerogatives of Congress, enables the President to constitutionally review individual items and it saves the taxpayer money.

The Rules Committee and its members on both sides should agree that this process has worked. During the testimony yesterday, no one quarreled with the fact that the congressional procedures and the law work, and they work well.

CBO even stated that the overall experience with the act is that it has performed effectively and that they are currently developing a 1-year analysis that will reach that conclusion. Furthermore, the experience with the military construction veto override process demonstrates that Congress can and will defend its spending prerogatives when necessary, and we did.

I strongly supported Congress doing so in that instance. The act has forced Congress to debate certain provisions more specifically and in a more open fashion. It is unlikely we could return to the simplicity of early American Congresses which often passed one-page spending bills, but maybe we ought to go back to that, ladies and gentlemen.

However, the line item veto narrows the decision-making process down where isolated determinations can be made.

Finally, Mr. Chairman, the President did not use the line item veto in a partisan manner, as some have accused him of. While various news reports claim that it was used to threaten certain lawmakers, no actual instances of abuse were found of which I am aware. In fact, according to an analysis done by the Rules Committee staff, the cancellations affected, and this is, I think, important to listen to, it affected 35 different States, 42 Republican districts and 16 Democrat districts. I ask that this analysis be inserted in the record at this time.

Mr. GOSS. Without objection.

[The information follows:]

SUMMARY OF PRESIDENTIAL ACTIONS

PURSUANT TO THE

LINE ITEM VETO ACT

(P.L. 104-130)

Part C of Title X of the

Congressional Budget Act of 1974

First Session,

105th Congress

Prepared by the
Majority Staff of the
Committee on Rules
House of Representatives

March 5, 1998

House Members, States and Districts Impacted By the Line Item Veto during the First Session of the 105th Congress

State	Member	District	Number of Vetoes	Cancellation Number
AK	Rep. Don Young	At Large	3	97-60, 97-72, 97-79
AL	Rep. Terry Everrett	2nd District	1	97-69
AL	Rep. Rob Aderholt	4th District	2	97-66, 97-74
AL	Rep. Earl Hilliard	7th District	1	97-69
AZ	Rep. Jim Kolbe	5th District	2	97-62, 97-71
AZ	Rep. J.D. Hayworth	6th District	1	97-62
CA	Rep. Jerry Lewis	40th District	3	97-4, 97-5 97-47
CA	Rep. Brian Bilbray	49th District	1	97-6
CA	Rep. James Rogan	27th District	1	97-7
CA	Rep. Bill Thomas	21st District	1	97-42
CA	Rep. Elton Gallegly	23rd District	1	97-53
CA	Rep. Brad Sherman	24th District	1	97-53
CA	Rep. Buck Mckeon	25th District	1	97-43
CO	Rep. Joel Hefley	5th District	1	97-8
FL	Rep. Tillie Fowler	4th District	1	97-9
FL	Rep. Joe Scarborough	1st District	1	97-10
GA	Rep. Sanford Bishop	2nd District	1	97-11
GA	Rep. Mac Collins	3rd District	1	97-73
HI	Rep. Neil Abercrombie	1st District	1	97-12
ID	Rep. Michael Crapo	2nd District	2	97-13, 97-14

Source: Special Messages of the President pursuant to the Line Item Veto Act of August 11, 1997 regarding the Taxpayer Relief Act of 1997; of August 11, 1997 regarding the Balanced Budget Act of 1997; of October 6, 1997 regarding the Military Construction Appropriations Act, 1998; of October 15, 1997 regarding the Defense Appropriations Act, 1998; of October 16, 1997 regarding the Treasury, Postal Appropriations Act, 1998; of October 17, 1997 regarding the Energy and Water Appropriations Act, 1998; of November 1, 1997 regarding the VA, HUD, and Independent Agencies Appropriations Act for 1998; of November 1, 1997 regarding the Transportation Appropriations Act for 1998; of November 20, 1997 regarding the Interior Appropriations Act of 1998; of November 20, 1997 regarding the Agriculture Appropriations Act of 1998; and of December 3, 1997 regarding the Commerce, Justice, State Appropriations Act of 1998. 03/05/98

State	Member	District	Number of Vetoes	Cancellation Number
IN	Rep. Peter Visclosky	1st District	1	97-57
IN	Rep. John Hostettler	8th District	1	97-15
IN	Rep. Steve Buyer	5th District	1	97-16
KS	Rep. Todd Tiahrt	4th District	1	97-17
KY	Rep. Ed Whitfield	1st District	1	97-18
KY	Rep. Ron Lewis	2nd District	1	97-19
MD	Rep. Steny Hoyer	5th District	1	97-20
MN	Rep. Martin Sabo	5th District	1	97-63
MT	Rep. Rick Hill	1st District	4	97-21, 97-67, 97-76, 97-82
MS	Rep. Roger Wicker	1st District	1	97-59
MS	Rep. Bennie Thompson	2nd District	2	97-75, 97-77
MS	Rep. Mike Parker	4th District	2	97-59, 97-75
NJ	Rep. Rod Frelinghuysen	11th District	1	97-44
NV	Rep. Jim Gibbons	2nd District	1	97-22
NM	Rep. Steve Schiff	1st District	3	97-23, 97-50 97-51
NM	Rep. Joe Skeen	2nd District	1	97-24
NY	All Districts		1	97-3
NY	Rep. John McHugh	24th District	1	97-25
NY	Rep. Bill Paxon	27th District	1	97-26
NC	Rep. Mike McIntyre	7th District	1	97-27
OH	Rep. John Kasich	12th District	2	97-80, 97-81
OK	Rep. J.C. Watts	4th District	1	97-65
PA	Rep. Bud Shuster	9th District	1	97-70
PA	Rep. Frank Mascara	20th District	1	97-28
PA	Rep. John Murtha	12th District	3	97-29, 97-48 97-61

State	Member	District	Number of Vetoes	Cancellation Number
SC	Rep. Lindsey Graham	2nd District	1	97-30
SD	Rep. John Thune	1st District	1	97-31
TN	Rep. Van Hilleary	4th District	1	97-32
TX	Rep. Silvestre Reyes	16th District	1	97-33
TX	Rep. Charles Stenholm	17th District	1	97-34
TX	Rep. Henry Bonilla	23rd District	1	97-35
UT	Rep. Jim Hansen	1st District	1	97-78
UT	Rep. Merrill Cook	2nd District	1	97-36
VA	Rep. Owen Pickett	2nd District	2	97-37, 97-38
VA	Rep. Herb Bateman	1st District	1	97-39
VA	Rep. Tom Davis	11th District	1	97-58
VT	Rep. Bernie Sanders	At Large	1	97-68
WV	Rep. Alan Mollahan	1st District	1	97-40
WI	Rep. Gerald Kleczka	4th District	1	97-41
All States and Districts			2	97-56, 97-64
ID, MT, ND, SD, WY		Unknown	1	97-55
Unknown States and Districts		—	7	97-1, 97-2, 97-45, 97-46 97-49, 97-52, 97-54

Political Summary

42	Republican Districts
16	Democrat Districts
35	Different States

Total Savings Summary

Affected Law:	Savings:
1. Taxpayer Relief Act of 1997	$415 million
2. Balanced Budget Act of 1997	$200 million
3. Military Construction Appropriations Act, 1998	$287 million
4. Defense Appropriations Act, 1998	$144 million
5. Treasury, Postal Appropriations Act, 1998	$854 million
6. Energy and Water Appropriations Act, 1998	$19.3 million
7. VA, HUD, and Indep. Agencies Appropriations Act, 1998	$1.92 million
8. Transportation Appropriations Act, 1998	$6.23 million
9. Interior Appropriations Act, 1998	$5.21 million
10. Agriculture Appropriations Act, 1998	$1.94 million
11. Commerce, Justice, State Appropriations Act, 1998	$5.00 million
GROSS SAVINGS	$1,939.6 million
Minus those overturned and overidden:	
1. Treasury, Postal Appropriations Act, 1998*	- $854 million
2. Military Construction Appropriations Act, 1998**	- $287 million
NET SAVINGS	**$798.6 MILLION**

* Line item veto of the President was overturned pursuant to an act of the U.S. District Court.

** Line item veto of the President was restored by both Houses of Congress pursuant to law.

Taxpayer Relief Act of 1997
House Members, States and Districts Impacted
August 11, 1997

State	Member	District	Number of Vetoes	Cancellation Number
Unknown States and Districts			2	97-1, 97-2

Political Summary

? Republican Districts
? Democrat Districts
? Different States

Savings Summary

No.	Cancellation:	Savings:
1. 97-1:	Exemption for Active Financing Income	$317 million
2. 97-2:	Nonrecognition of Gain on Sale of Stock to Certain Farmers' Cooperatives	$ 98 million
TOTAL SAVINGS		$415 million

Balanced Budget Act of 1997
House Members, States and Districts Impacted
August 11, 1997

State	Member	District	Number of Vetoes	Cancellation Number
NY	All Districts		1	97-3

Political Summary

13	Republican Districts
18	Democrat Districts
1	Different States

Savings Summary

No.	Cancellation:	Savings:
1. 97-3:	Waiver of Certain Tax Prov. under the Medicaid Program	$200 million
TOTAL SAVINGS		$200 million

Military Construction Appropriation Act for 1998
House Members, States and Districts Impacted*
October 6, 1997

State	Member	District	Number of Vetoes	Cancellation Number
CA	Rep. Jerry Lewis	40th District	2	97-4, 97-5
CA	Rep. Brian Bilbray	49th District	1	97-6
CA	Rep. James Rogan	27th District	1	97-7
CO	Rep. Joel Hefley	5th District	1	97-8
FL	Rep. Tillie Fowler	4th District	1	97-9
FL	Rep. Joe Scarborough	1st District	1	97-10
GA	Rep. Sanford Bishop	2nd District	1	97-11
HI	Rep. Neil Abercrombie	1st District	1	97-12
ID	Rep. Michael Crapo	2nd District	2	97-13, 97-14
IN	Rep. John Hostettler	8th District	1	97-15
IN	Rep. Steve Buyer	5th District	1	97-16
KS	Rep. Todd Tiahrt	4th District	1	97-17
KY	Rep. Ed Whitfield	1st District	1	97-18
KY	Rep. Ron Lewis	2nd District	1	97-19
MD	Rep. Steny Hoyer	5th District	1	97-20
MT	Rep. Rick Hill	1st District	1	97-21
NV	Rep. Jim Gibbons	2nd District	1	97-22
NM	Rep. Steve Schiff	1st District	1	97-23
NM	Rep. Joe Skeen	2nd District	1	97-24
NY	Rep. John McHugh	24th District	1	97-25
NY	Rep. Bill Paxon	27th District	1	97-26

8

State	Member	District	Number of Vetoes	Cancellation Number
NC	Rep. Mike McIntyre	7th District	1	97-27
PA	Rep. Frank Mascara	20th District	1	97-28
PA	Rep. John Murtha	12th District	1	97-29
SC	Rep. Lindsey Graham	2nd District	1	97-30
SD	Rep. John Thune	1st District	1	97-31
TN	Rep. Van Hilleary	4th District	1	97-32
TX	Rep. Silvestre Reyes	16th District	1	97-33
TX	Rep. Charles Stenholm	17th District	1	97-34
TX	Rep. Henry Bonilla	23rd District	1	97-35
UT	Rep. Merrill Cook	2nd District	1	97-36
VA	Rep. Owen Pickett	2nd District	2	97-37, 97-38
VA	Rep. Herb Bateman	1st District	1	97-39
WV	Rep. Alan Mollahan	1st District	1	97-40
WI	Rep. Gerald Kleczka	4th District	1	97-41

Political Summary

24	Republican Districts
10	Democrat Districts
24	Different States

* Pursuant to actions by the House of Representatives on February 5, 1998 and the Senate on February 25, 1998, regarding the disapproval resolution H.R. 2631 these cancellations were restored.

9

Savings Summary

No.	Cancellation:	Savings:
1. 97-4:	Live Fire Command and Control Facility, Fort Irwin, CA	$2.65 million
2. 97-5:	Rotational Wash Point, Fort Irwin, CA	$8.5 million
3. 97-6:	Waterfront Ops. Bldg., Coronado Naval Amph. Base, CA	$10.1 million
4. 97-7:	Marine Corps Reserve Center, Pasadena, CA	$6.69 million
5. 97-8:	Railyard Expansion, Fort Carson, CO	$16 million
6. 97-9:	Pier Improvements, Mayport Naval Station, FL	$17.94 million
7. 97-10:	Runway Upgrades, Whiting Field, FL	$1.3 million
8. 97-11:	HH-60 Rescue Operations Facility, Moody AFB, GA	$6.8 million
9. 97-12:	Asian Pacific Center, Fort Derussey, HI	$9.5 million
10. 97-13:	B-1B Avionics Bldg, Mountain Home AFB, ID	$9.2 million
11. 97-14:	F-15C Squadron Ops. Facility, Mountain Home AFB, ID	$3.75 million
12. 97-15:	Chemical-Biological Warfare Detection Ctr., CNSWC, IN	$4.12 million
13. 97-16:	Base Civil Engineer Complex, Grissom AFB, IN	$8.9 million
14. 97-17:	Transportation Complex, McConnell AFB, Kansas	$2.85 million
15. 97-18:	Tactical Equipment Shop, Fort Campbell, KY	$9.9 million
16. 97-19:	Qualification Training Range, Fort Knox, KY	$7.2 million
17. 97-20:	Maint. Hangar, St. Inigoes Nav. Elect. Syst. Eng. Act., MD	$2.6 million
18. 97-21:	Add/Alter Airmen Dining Facility, Malmstrom AFB, MT	$4.5 million
19. 97-22:	Munitions Maintenance Facility, Nellis AFB, NV	$1.95 million
20. 97-23:	Launch Complex Revital., White Sands Missile Rg., NM	$6.9 million
21. 97-24:	Flight Simulation Train. Facil., Kirtland AFB, NM	$14 million
22. 97-25:	Aerial Gunnery Range, Fort Drum, NY	$9 million
23. 97-26:	Consolidated Training Facility, Niagara Falls IAP, NY	$2.1 million
24. 97-27:	Military Ops. on Urbanized Terrain, Fort Bragg, NC	$7.9 million
25. 97-28:	U.S. Army Reserve Ctr./Organ. Maint. Shop, Oakdale, PA	$6 million
26. 97-29:	Reserve Hangar and Training Center, Johnstown, PA	$13.9 million
27. 97-30:	Regional Simulation Center, Leesburg Training Ctr., SC	$3.8 million
28. 97-31:	Aviation Support Facility, Rapid City, SD	$5.2 million
29. 97-32:	Atmospheric Air Dryer Facility, Arnold AFB, TN	$9.9 million
30. 97-33:	Ammunition Supply Point Expansion, Fort Bliss, TX	$7.7 million
31. 97-34:	B-1 Squadron Ops./Aircraft Main. Unit, Dyess AFB, TX	$10 million
32. 97-35:	Corrosion Control Facility, Laughlin AFB, TX	$4.8 million
33. 97-36:	U.S. Army Reserve Center/OMS, Camp Williams, UT	$12.7 million
34. 97-37:	Air Operations Building, Norfolk Naval Air Station, VA	$4 million
35. 97-38:	Waterfront Improvements, Norfolk Naval Shipyard, VA	$19.9 million
36. 97-39:	Tomahawk Magazine, Yorktown Nav. Weapons Stat., VA	$3.29 million
37. 97-40:	Armed Forces Reserve Center, Camp Dawson, WV	$6.8 million
38. 97-41:	Aerial Port Training Facility, Mitchell AFS, WI	$4.2 million
TOTAL SAVINGS		$287 million

Defense Appropriations Act for 1998
House Members, States and Districts Impacted
October 15, 1997

State	Member	District	Number of Vetoes	Cancellation Number
CA	Rep. Bill Thomas	21st District	1	97-42
CA	Rep. Elton Gallegly	23rd District	1	97-53
CA	Rep. Brad Sherman	24th District	1	97-53
CA	Rep. Buck Mckeon	25th District	1	97-43
CA	Rep. Jerry Lewis	40th District	1	97-47
NJ	Rep. Rod Frelinghuysen	11th District	1	97-44
NM	Rep. Steve Schiff	1st District	2	97-50, 97-51
PA	Rep. John Murtha	12th District	1	97-48
ID, MT, ND, SD, WY		Unknown	1	97-55
Unknown States and Districts			5	97-45, 97-46, 97-49, 97-52, 97-54

Political Summary

6 Republican Districts
2 Democrat Districts
9 Different States

Savings Summary

Cancellation:		Savings:
1. 97-42:	SR-71	$30 million
2. 97-43:	SR-71 Mods	$ 9 million
3. 97-44:	Gallo Center	$ 4 million
4. 97-45:	Molten Carbonate Fuel Cells Technology	$ 6 million
5. 97-46:	Periscopic Minimally Invasive Surgery	$ 3 million
6. 97-47:	Proton Beam	$ 4 million
7. 97-48:	Terfenol-D	$ 3 million
8. 97-49:	COTS Airgun as an Acoustic Source	$ 3 million
9. 97-50:	Military Spaceplane	$10 million
10. 97-51:	Clementine	$30 million
11. 97-52:	Optical Correlator Technology	$1.5 million
12. 97-53:	Kinetic Energy ASAT	$37.5 million
13. 97-54:	Risk-based Toxic Chemicals Research	$ 2 million
14. 97-55:	Defense Techlink Rural Technology Transfer	$ 1 million
TOTAL SAVINGS		$144 million

Treasury, Postal Appropriations Act, 1998
House Members, States and Districts Impacted*
October 16, 1997

State	Member	District	Number of Vetoes	Cancellation Number
All States and Districts			1	97-56

Political Summary

? Republican Districts
? Democrat Districts
? Different States

Savings Summary

No.	Cancellation:	Savings:
1. 97-56:	Reductions in Employee Contributions to the CSRDF	$854 million
TOTAL SAVINGS		$854 million

* Pursuant to an action in the U.S. District Court in the District of Columbia and an acknowledgment by the Administration these cancellations were restored.

Energy and Water Appropriations Act for 1998
House Members, States and Districts Impacted
October 17, 1997

State	Member	District	Number of Vetoes	Cancellation Number
AK	Rep. Don Young	At Large	1	97-60
AZ	Rep. Jim Kolbe	5th District	1	97-62
AZ	Rep. J.D. Hayworth	6th District	1	97-62
IN	Rep. Peter Visclosky	1st District	1	97-57
MN	Rep. Martin Sabo	5th District	1	97-63
MS	Rep. Roger Wicker	1st District	1	97-59
MS	Rep. Mike Parker	4th District	1	97-59
PA	Rep. John Murtha	12th District	1	97-61
VA	Rep. Tom Davis	11th District	1	97-58
All States and Districts			1	97-64

Political Summary

6 Republican Districts
3 Democrat Districts
7 Different States

Savings Summary

Cancellation:		Savings:
1. 97-57:	Lake George, Hobart, IN COE. Dredging Project	$3.5 million
2. 97-58:	Neabsco Creek Fld. Ctrl. Proj., Prince William County, VA	$ .8 million
3. 97-59:	Sardis Lake, MS COE. Dredging Project	$1.9 million
4. 97-60:	Chena River Dredging Project, Fairbanks, AK	$ .8 million
5. 97-61:	Allegany River (Kittanning River Front Prk), PA COE Proj.	$ 6 million
6. 97-62:	In-situ Copper Mining Research Project	$1.3 million
7. 97-63:	Research/Dev. Partnership to Manuf. Electric Trans. Lines	$ 1 million
8. 97-64:	NRC to License a Multi-purpose Canister Design	$ 4 million
TOTAL SAVINGS		$19.3 million

VA, HUD, and Independent Agencies Appropriations Act for 1998
House Members, States and Districts Impacted

November 1, 1997

State	Member	District	Number of Vetoes	Cancellation Number
AL	Rep. Terry Everett	2nd District	1	97-69
AL	Rep. Rob Aderholt	4th District	1	97-66
AL	Rep. Earl Hilliard	7th District	1	97-69
AZ	Rep. Jim Kolbe	5th District	1	97-71
MT	Rep. Rick Hill	At Large	1	97-67
OK	Rep. J.C. Watts	4th District	1	97-65
PA	Rep. Bud Shuster	9th District	1	97-70
VT	Rep. Bernie Sanders	At Large	1	97-68

Political Summary

6 Republican Districts
2 Democrat Districts
6 Different States

Savings Summary

No.	Cancellation:	Savings:
1. 97-65:	Veteran National Cemetery at Fort Sill, Oklahoma	$871 thousand
2. 97-66:	Economic Development Initiative "Arab Police Depart."	$ 15 thousand
3. 97-67:	Carter County Chamber of Commerce for Trade and Dev.	$ 1 thousand
4. 97-68:	Solar Aquatic Wastewater Treatment Demonstration Proj,	$600 thousand
5. 97-69:	Alabama Water and Wastewater Institute	$ 1 thousand
6. 97-70:	McConnellsburg, PA Wastewater and Drink. Water Sys.	$420 thousand
7. 97-71:	Optical Astronomy Testbeds	$ 10 thousand
TOTAL SAVINGS		$1.92 million

Transportation Appropriations Act for 1998
House Members, States and Districts Impacted

November 1, 1997

State	Member	District	Number of Vetoes	Cancellation Number
AK	Rep. Don Young	At Large	1	97-72
AL	Rep. Rob Aderholt	4th District	1	97-74
GA	Rep. Mac Collins	3rd District	1	97-73

Political Summary

3 Republican Districts
0 Democrat District
3 Different States

Savings Summary

No.	Cancellation:	Savings:
1. 97-72:	Improvements to Seward Dock	$ 5.28 million
2. 97-73:	Electronic Distribution Ctr. For Surplus Transit Equipment	$ .50 million
3. 97-74:	Transportation Emergency Preparedness and Resp. Demo	$ .45 million
TOTAL SAVINGS		$6.23 million

Interior Appropriations Act for 1998
House Members, States and Districts Impacted

November 20, 1997

State	Member	District	Number of Vetoes	Cancellation Number
MT	Rep. Rick Hill	At-Large	1	97-76
MS	Rep. Bennie Thompson	2nd District	1	97-75
MS	Rep. Mike Parker	4th District	1	97-75

Political Summary

2 Republican Districts
1 Democrat Districts
3 Different States

Savings Summary

Cancellation:		Savings:
1. 97-75:	Franklin County Dam	$ .01 million
2. 97-78:	Conveyance to the State of Montana federal mineral rights	$ 5.2 million
TOTAL SAVINGS		$5.21 million

Agriculture Appropriations Act for 1998
House Members, States and Districts Impacted

November 20, 1997

State	Member	District	Number of Vetoes	Cancellation Number
AK	Rep. Don Young	At-Large	1	97-79
MS	Rep. Bennie Thompson	2nd District	1	97-77
OH	Rep. John Kasich	12th District	2	97-80, 97-81
UT	Rep. Jim Hansen	1st District	1	97-78

Political Summary

3 Republican Districts
1 Democrat Districts
4 Different States

Savings Summary

	Cancellation:		Savings:
1.	97-77:	Biocontrol and Insect Rearing Lab., Stoneville, MS	$ .9 million
2.	97-78:	Poisonous Plant Laboratory, Logan Utah	$ .6 million
3.	97-79:	Special Research Grants Project "Dairy Alaska"	$ .25 million
4.	97-80:	Special Research Grants Proj. "Hydroponic Tomato Prod."	$ .14 million
5.	97-81:	Special Rsearch Grants Proj. "Plant Genome Research"	$ .05 million
TOTAL SAVINGS			$1.94 million

Commerce, Justice, and State Appropriations Act for 1998
House Members, States and Districts Impacted

December 3, 1997

State	Member	District	Number of Vetoes	Cancellation Number
MT	Rep. Rick Hill	At-Large	1	97-82

Political Summary

1	Republican District
0	Democrat District
1	Different State

Savings Summary

	Cancellation:	Savings:
1. 97-82:	Cooperative Agreement with Montana State University for a Research Program on Green Buildings	$5 million
TOTAL SAVINGS		$5 million

Mr. SOLOMON. While the disproportionate share of cancellations in Republican districts may seem to indicate partisanship, it does not when viewed in the context of two other details. First, it is not unreasonable to assume that Republican appropriation bills largely contain Republican priorities. Second, when laid over the distribution of Senate seats, these cancellations are even more balanced.

Furthermore, 7 cancellations could not even be itemized down to the individual States and congressional districts impacted, one cancellation impacted 5 different States, and two impacted all States and congressional districts.

While the fiscal rationale behind many of the President's cancellations seems flawed, the use of this authority seems quite balanced from a political and a partisan perspective.

Before I conclude, I would like to briefly comment on a bill proposed by my good friends, Mr. Upton and Mr. Roemer—I don't know if they are here yet—each of which will be testifying later this morning.

Mr. GOSS. Right.

Mr. SOLOMON. Their bill seeks to allow the President to exercise the line item veto authority, even when the budget is not in deficit. As you know, Mr. Chairman, the line item veto allows the President to use this authority so long as he can certify that doing so will reduce the deficit. This was one of three thresholds of justification established under the law that you and I, in particular, insisted on, and of which the Senate objected right up to the last dying moment.

This deficit reduction certification was added during consultation with the Senate. The House passed bill allowed the President to use the line item veto regardless of the state of the budget and that has been my position all along. I look forward to working with my colleagues and the chairman to ensure that the line item veto will be the most effective and efficient law possible.

Let me conclude by thanking once again CBO, the GAO, CRS, the House parliamentarians and others for all of their outstanding assistance in this matter. During our original drafting of the line item veto bill and its progression through this legislative process and over the last year as this committee has sought to provide oversight over the actual implementation of the act, these organizations' knowledge has proven invaluable to us.

And finally, I would be remiss if I did not commend my good friend and chairman of the subcommittee, Mr. Goss, and his personal staff on the Rules Committee for the outstanding work that they have done in this matter. It has been an honor to develop, watch and defend this truly historic law with you, and I look forward to continuing these mutual efforts, and above all else, we must absolutely make sure that there is not an undermining effort out there to do away with this very valuable law.

And you and I will pledge ourselves to make sure that that doesn't happen. Nothing will ever go through this Rules Committee while I am chairman that would allow that to happen.

So thank you very much for all of your time, Mr. Chairman. I apologize to Mr. Murtha for holding him here so long to listen to my rhetoric, which he has been doing for 20 years.

[The statement of Mr. Solomon follows:]

CONGRESSMAN JERRY SOLOMON
New York
Rules Committee Chairman,
House of Representatives

STATEMENT OF CHAIRMAN GERALD B.H. SOLOMON
FOR RULES SUBCOMMITTEE ON THE LEGISLATIVE
AND BUDGET PROCESS HEARING ON THE
LINE ITEM VETO AFTER ONE YEAR
MARCH 12, 1998

I thank the Chairman and the subcommittee for the opportunity to testify this morning on a matter of mutual and great importance, the line item veto.

On December 1, 1873 in his annual address to Congress President Ulysses S. Grant, called on Congress to "authorize the Executive to approve of so much of any measure passing the two Houses of Congress as his judgment may dictate, without approving the whole, the disapproved portion or portions to be... referred back to the House in which the measure originated."

One hundred and twenty-two years later, on February 6, 1995, coincidentally Ronald Reagan's birthday, the House passed the Line Item Veto Act as the 2nd plank in the Contract With America. After a 7 month House/Senate conference, President Clinton signed the bill into law on April 9, 1996. By this act of bipartisan cooperation, the taxpayers had empowered their government with another arrow in the quiver of budget discipline. As a result, spending is lower, accountability is higher and responsibility is more clearly defined. The line item veto has surely delivered as advertised.

As we reflect on the first fifteen months of the operation of this new law, I want to focus on three points. First, the line item veto has increased accountability. The budget process in all of its many parts now takes into account the presence of the line item veto. Whether it be the Appropriations Committee writing discretionary spending bills, the Budget Committee and Ways and Means Committee devising reconciliation bills or an authorizing committee creating a new mandatory program, Congress clearly recognizes the impact of the Line Item Veto. New discretionary spending, new entitlement spending and limited tax benefits must now overcome a new obstacle to their enactment. To paraphrase Alexander Hamilton the oftener these measures are examined the less likely spending that is not in the national interest will occur. So the line item veto does make it harder to spend taxpayer dollars unaccountably.

Second, the federal government's spending is lower as a result of this law. While, as

was indicated yesterday, it is impossible to measure the deterrent effect of the line item veto, actual dollars saved have been measured. According to OMB, the total savings of the President's cancellations before recent court and Congressional actions was $1.9 billion and $798 million after such actions. According to CBO, the total savings before the actions overturning some of these cancellations was $937 million and after were $569 million. To those who claim that the line item veto's savings are very small as a percentage of the total budget, I would make one observation. Without the line item veto, the government's spending would be higher and because of this law it is lower. Regardless of who scores it, taxpayer dollars - in fact more than a half a billion dollars - have been used to reduce the deficit. The act's dedication of savings from cancellations has worked to guarantee the American people that this budgetary tool would be used to reduce the deficit. This lockbox has shifted the spending bias in this portion of the budget process.

Third, the line item veto has increased government responsibility. This carefully constructed and balanced delegation to the President highlights the spending decisions of both the President and Congress. After 82 cancellations many questionable spending decisions were drawn out into the sunshine for further examination. After further review, 38 were reinstated by Congress and 1 was overturned pursuant to an agreement before a U.S. District Court. The bottom line is that the line item veto process maintains the budgetary prerogatives of Congress, enables the President to constitutionally review individual items and saves the taxpayers money.

The Rules Committee and its Members on both sides should agree that the process works. During the testimony yesterday, no one quarreled with the fact the congressional procedures in the law work - and they work well. CBO even stated that the overall experience with the act is that it has performed effectively and they are currently developing a one year analysis that reaches this conclusion.

Furthermore, the experience with the military construction veto override process demonstrates that Congress can and will defend its spending prerogatives when necessary. I strongly supported Congress doing so in that instance. The Act has forced Congress to debate certain provisions more specifically and in a more open fashion. It is unlikely we could return to the simplicity of early American Congress' which often passed one page spending bills. However, the line item veto narrows the decision making process down where isolated determinations can be made.

Finally, the President did not use the line item veto in a partisan manner. While various news reports claimed that it was used to threaten certain lawmakers, no actual instances of abuse were found of which I am aware. In fact according to an analysis done by the Rules Committee staff, the cancellations affected 35 different states, 42 Republican districts and 16 Democrat districts. (Ask that this analysis be inserted in the record). While the disproportionate share of cancellations in Republican districts may seem to indicate partisanship, it does not when viewed in

the context of two other details. First, it is not unreasonable to assume that Republican appropriation bills largely contained Republican priorities. Second, when laid over the distribution of Senate seats, these cancellations are more balanced. Furthermore, 7 cancellations could not even be itemized down to the individual states and congressional districts impacted, 1 cancellation impacted 5 different states, and 2 impacted all states and congressional districts. While the fiscal rationale behind many of the President's cancellations seems flawed, the use of this authority seems quite balanced from a political and partisan perspective.

Before I conclude I would like to briefly comment on a bill proposed from my good friends, Mr. Upton and Mr. Romer, each of which will be testifying later this morning. Their bill seeks to allow the President to exercise the line item veto authority even when the budget is not in deficit. As you know, Mr. Chairman, the line item veto allows the President to use this authority so long as he can certify that doing so would reduce the deficit. This was one of three thresholds of justification established under the law.

This deficit reduction certification was added during consultation with the Senate. The House passed bill allowed the President to use the line item veto regardless of the state of the budget, and that has been my position all along. I look forward to working with my colleagues and the Chairman to ensure that the line item veto will be the most effective and efficient law possible.

Let me conclude by thanking once again CBO, GAO, CRS, the House Parliamentarians and others for their outstanding assistance. During our original drafting of the line item veto bill and its progression through the legislative process and over the last year as this committee has sought to provide oversight over the actual implementation of the act, these organizations knowledge has proven invaluable.

Finally, I would be remiss if I did not commend my good friend and Chairman of the Subcommittee, Mr. Goss, for his tremendous leadership on this issue over the last few years and for his continued commitment to the principles of fiscal discipline, accountable government and deliberative democracy. It has been an honor to develop, watch and defend this truly historic law with you and look forward to continuing in these mutual efforts. I commend you for your persistence and leadership in holding these hearings.

Thank you.

Mr. GOSS. Mr. Chairman, thank you very much. The testimony is extremely valuable and it will be presented in that form for the record as well as your stated comments.

I would be glad if you would—and we would be pleased to have your further observations from here. I did want to ask your view on one point. We did hear yesterday that sometimes when the appropriations bills get jammed up and all go down to the White House at the end of the session at the same time, that 5–day window may not be enough time for the White House staff. Do you have any observation on that?

Mr. SOLOMON. Well, you know, you have to trust a President, whoevr the President is, and we would hope that the President wouldn't use that authority, especially with so many days in session. Particularly our next witness has been one of the strongest defenders of our defense budget and our military, and there is always that danger. But I think in future testimony we want to look into it and make sure, if it needs improvement, we can do that.

Mr. GOSS. Thank you.

Mr. Murtha, we are very honored to welcome you here this morning in front of this subcommittee and we very much value your testimony. I have a written statement which will be accepted without objection into the record.

Any words of advice, wisdom or testimony you wish to give us would be gratefully received.

STATEMENT OF STATEMENT OF HON. JOHN P. MURTHA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. MURTHA. I appreciate it, Mr. Chairman, and I appreciate the work that has been done on this law, although my disagreement is that if we are going to change the balance of power between the President and Congress it should be a constitutional amendment rather than the law. If you remember, the Line Item Veto Act passed by 232 to 177, far short of a constitutional majority, a two–thirds majority.

In the years I have been here, 25 years, we have had 241 vetoes. Twenty-seven have been overridden. If you look back, a lot of those were for other than fiscal reasons. Abortion was one. In some cases, vetoes were threatened because there wasn't enough money in the budget.

For instance, President Reagan, threatened to veto the defense bill because it was too small. Senator Byrd—and you will see some of his comments which I have taken from his testimony or his speech on the floor—talks about the States that have the line item veto, and how there is very little fiscal impact in the studies that he has done. I don't disagree that over a billion dollars in savings is a lot of savings, but my concern is that the balance of power has shifted.

Now, in my experience, we have only a third discretionary money. When I came here and when you folks came here, we had more than 50 percent discretionary money and much more leeway. It has been reduced by the increased entitlements. Medicare, Medicaid and Social Security have increased, and there are all kinds

of reasons for that, but the point is we have less and less discretionary money. Even in the defense bill, which is the biggest discretionary bill in the entire Congress, half of it is for personnel. Half of it is essential and is dictated by the Defense Department and we have no say about it. But we have the largest discretionary money, and I think I can speak from experience when I talk about influence and what I think would have happened.

For instance, I can remember in the Carter administration, when they threatened to veto the bill if the B–1 went in. There is no question in my mind the B–1 would have been line item vetoed.

I remember 5 years ago, I introduced an amendment in the committee, which they accepted, for $2 billion for transportation ships. The Defense Department didn't want it. They tried to reprogram the funds. They did everything. They sent it over as a rescission. They did everything they could to not to put this $2 billion in.

The Gulf War came along and they saw that even though they had pushed transport airplanes, 95 percent of everything that went to the Gulf, went to the Gulf by sea. They started this program which had sat in limbo in unobligated balances for 4 or 5 years, they started to build those ships. The first ship, came off the line not long ago. So this has taken 4 or 5 years in order to get this thing in line.

Before the Gulf War, I put SL–7s in. SL–7s are fast transportation ships. If we hadn't had them in the Gulf War, they only wanted combat ships, we would have had a desperate time trying to come up with the ships we needed in order to get to the Gulf.

Breast cancer research, now some people may say breast cancer research should not be in the defense bill. But, I can assure you, if the defense department had its way, they would have line item vetoed breast cancer research from that bill, and some people would agree with that. But in my estimation breast cancer research is something that was important to the spouses, important to the families, and important to the cancer survivors who came to see me. Congress has overwhelmingly supported that position over and over again.

I will give you a specific example of the intimidation by the White House, you talk about how it was hard to find intimidation. I remember when we were trying to find a way for Members of Congress to get a per diem and one of your predecessors, Chairman Bolling. He was a little more liberal than I was, and there were a lot of things I disagreed with. Mr. Bolling was chairman for a very short period of time, he and I ideologically didn't agree on a lot.

Mr. SOLOMON. There is his picture right behind you. He is watching.

Mr. MURTHA. Yes.

We were trying to work this out on a rate for per diem. My idea was, let everybody take per diem and then they would justify it and they would sign off on whatever they take and they would send it in your tax return and you justify every cent.

Well, Dick Bolling cornered me and he said, now, Murtha, I am going to tell you, you have to protect the independence of the House. He said, the fellows down at the White House will use every method possible to intimidate Members when they want legislation

through, and if you put in per diem with an itemized list, the IRS will be auditing all Members of Congress.

Well, I am not sure that I believed that a President or an executive branch would do that, but at any rate that made me nervous and we—if you remember, had the flat per diem which only lasted one year. But the point was, that was the best way to do it so that we didn't have to justify it.

Every President is measured by his legislative accomplishments. The great Presidents, Theodore Roosevelt for his environmental accomplishments, the parks that he developed; Franklin Roosevelt for his social legislation; and Lyndon Johnson for the legislation he passed. Presidents will go to almost any means in order to convince Members that they want their legislation passed. They twist arms. You have been on both ends of this kind of pressure from the White House in trying to persuade us to vote with them.

Many votes are very close, such as, the economic package, which all the Democrats passed and you folks opposed. In order to get that passed there were 10 or 12 people that had to be persuaded and they used every persuasion possible in order to get that legislation through, and then some.

If you give the executive branch an extra tool, like the line item veto, in my estimation, a President will use that tool. I do not say this President. I don't know that Lyndon Johnson, the way he approached Congress might have used it, but it gives an extra tool to a President that changes the balance.

Now, let me give you a specific example. During our deliberations, the OMB Director called me, and he said, "Now, we have just vetoed the military construction bill." As the chairman said, we weren't too happy about that. We were prepared to override it. The point was that he had just overridden it and showed what they thought was the way it should be used. He said, "Now if you don't want me to line item veto anything in your defense bill, there are some things that I need." He gave me a billion dollars worth of priorities.

Well, the committee didn't believe those priorities were the same as the priorities that he was interested in, but we took into consideration the fact that this entire bill would be left alone, if we made some increases. The bill was left alone.

Now, we didn't give them all the increases that they wanted. But, the point was, with this particular conversation, he was trying to intimidate us and use extra leverage. Now, he could have said, "Well, I will veto the whole bill," as some Presidents have said. The recourse we have, I think, really is not a recourse. What do we do? We pass a new bill. We call it a disapproval, but we pass a new bill. We pass that in both Houses by two-thirds, and it identifies who votes that way. The House, of course, passed it overwhelmingly. The other body only passed it by 2 votes in the first round. If the President had focused, I am convinced, they probably could have turned down the line item veto for military construction, because they knew how they voted. So, at the very least, there is a fallacy in the recourse that we have.

We shouldn't have to act twice. If we take action like that, it should be one time, not two times where they can identify who voted against them. The President could have gone to work on two

people to change their minds, and you know with the persuasion of a President, it is a lot easier to persuade us.

I am convinced that we need a constitutional amendment. Senator Byrd, you might look over his comments, is very clear in what he says. I am convinced that a constitutional amendment is the only way we can change this delicate balance between the administration and the Congress. One thing I will add, when it is a line item veto and there are so many bills, it is the staff that makes the decision. When it is a full veto, then it is the President himself, that makes the final determination. When you give this leeway to staff and you heard the rumors, OMB goes to the departments and says, "What can we take out of there?" To me, that disrupts this delicate balance between the Congress and the executive branch.

So I would hope you would consider, that as you go through this legislation, at the very least, giving the President one opportunity to override action rather than require a double passage of legislation.

[The statement of Mr. Murtha follows:]

I HAVE BEEN IN THE CONGRESS FOR ALMOST 25 YEARS. DURING THAT PERIOD OF TIME WE HAVE HAD 241 VETOES AND 27 OVERRIDES. THAT MEANS WE HAVE ONLY OVERRIDDEN THE PRESIDENT ON AN AVERAGE OF ONE TIME PER YEAR.

MOST PRESIDENTS ARE MEASURED BY THEIR LEGISLATIVE ACCOMPLISHMENTS. MOST PRESIDENTS SPEND A TREMENDOUS AMOUNT OF TIME TRYING TO GET LEGISLATION THROUGH THE CONGRESS.

IF YOU REMEMBER THIS PRESIDENT WAS IN HIS LOWEST STATE IN THE APPROVAL RATING WITH THE PUBLIC WHEN HE COULDN'T GET THE MEDICAL REFORM LEGISLATION THROUGH THE CONGRESS.

ON THE OTHER HAND LYNDON JOHNSON IS RENOWNED FOR THE AMOUNT OF LEGISLATION HE INFLUENCED. PRESIDENT ROOSEVELT'S ACCOMPLISHMENTS ARE MEASURED BY THE LEGISLATION HE WAS ABLE TO GET PASSED.

OBVIOUSLY THEY NEED MEMBERS OF CONGRESS TO VOTE WITH THEM AND PRESIDENTS USE EVERY TYPE OF PRESSURE POSSIBLE TO PERSUADE MEMBERS OF CONGRESS TO VOTE WITH THEM. ONE OF THE REALLY SIGNIFICANT PIECES OF LEGISLATION THAT WE PASSED IN THE CONGRESS DURING CLINTON'S FIRST TERM WAS SOME ECONOMIC LEGISLATION WHICH

PASSED ONLY BY ONE VOTE. YOU CAN IMAGINE THE TYPE OF PROMISES THAT ARE MADE IN ORDER TO GET THAT LEGISLATION THROUGH. SO IF WE ASSUME THAT AN IMPORTANT PART OF A PRESIDENT'S HISTORICAL RECORD, A KEY TO HIS HISTORICAL APPROVAL, IS THE LEGISLATION THAT HE GETS THROUGH CONGRESS THEN YOU HAVE TO REALIZE THAT ANYTHING THAT ENHANCES HIS ABILITY TO PASS LEGISLATION CHANGES THE BALANCE BETWEEN THE EXECUTIVE BRANCH AND THE CONGRESS.

I AM CONVINCED THAT THE LINE ITEM VETO GIVES THE PRESIDENT UNPRECEDENTED LEVERAGE IN DEALING WITH MEMBERS OF CONGRESS. I REMEMBER ONE OF YOUR RULES COMMITTEE PREDECESSORS WHO WAS CHAIRMAN FOR A SHORT TIME ADVISED ME WHEN I WAS TRYING TO GET LEGISLATION THROUGH WHICH WOULD ALLOW MEMBERS OF CONGRESS TO GET PER DIEM EXPENSES, ONE OF THE THINGS WE LOOKED AT WAS THE POSSIBILITY OF DOCUMENTING EVERYTHING THAT WE DID. AND DICK BOWLING SAID, TO ME " MURTHA LET ME TELL YOU, YOU WANT TO GUARD THE INDEPENDENCE OF THE HOUSE. IF YOU ALLOW MEMBERS TO DOCUMENT THEIR PER DIEM EXPENSES, YOU'LL HAVE AUDITS, YOU'LL HAVE MEMBERS OF CONGRESS IN JUDGEMENT BY THE IRS," MEANING THAT MEMBERS OF CONGRESS COULD BE INTIMIDATED.

LET ME TAKE SOME OF THE EXPERIENCE THAT I HAVE HAD WITH LEGISLATION AND HOW IT COULD HAVE BEEN CHANGED BY THE LINE ITEM

VETO.

FIVE OR SIX YEARS AGO OUR COMMITTEE ADDED 2 BILLION DOLLARS AT MY RECOMMENDATION TO BUILD TRANSPORT SHIPS. THE WHITE HOUSE WAS AGAINST IT, THE DEFENSE DEPARTMENT DIDN'T FEEL IT NEEDED THE MONEY, AND I AM CONVINCED THERE WOULD HAVE BEEN A LINE ITEM VETO BECAUSE IT WAS A LARGE AMOUNT OF MONEY WHICH THEY DIDN'T FEEL THAT THEY NEEDED. IT TURNS OUT THAT IN THE GULF WAR 95% OF EVERYTHING WE SENT THERE WAS CARRIED BY SHIP, AND IT PROVED TO THE ADMINISTRATION THAT THEY DID NEED THE 2 BILLION DOLLARS FOR THESE SHIPS THIS PROGRAM IS NOW GOING FORWARD. ALSO, I AM CONVINCED THE B1 WOULD OF BEEN LINE ITEMED BY PRESIDENT CARTER. I AM CONVINCED BREAST CANCER RESEARCH WHICH SOME OF THE DEPARTMENTS OPPOSED WOULD HAVE BEEN LINE ITEM VETOED, BONE MARROW TRANSPLANT LEGISLATION WHICH WAS IN DEFENSE MIGHT HAVE BEEN LINE ITEM VETOED.

NOW I DON'T SAY THAT THERE AREN'T MEMBERS OF CONGRESS THAT WOULDN'T AGREE WITH THESE LINE ITEM VETOES. WHAT I AM SAYING IS IT GIVES THE PRESIDENT A TREMENDOUS INFLUENCE OVER THE MEMBERS WHEN HE'S DEALING WITH THEM.

SPECIFICALLY, I WAS DESIGNATED AS THE PERSON TO DEAL WITH THE COMMITTEE WITH LINE ITEM VETO AND TRYING TO WORK OUT THE DETAILS IN

THE 1998 DEFENSE CONFERENCE .

THE DIRECTOR OF OMB CALLED ME AND HE SAID," IF YOU'LL ADD ANOTHER 4 OR 5 HUNDRED MILLION DOLLARS TO SEVERAL PROJECTS THAT WE'RE INTERESTED IN, IN PROJECTS THE COMMITTEE DIDN'T THINK WERE PRIORITIES, YOU WON'T GET ANY LINE ITEM VETOES. WELL, IN THE PAST WE WOULD HAVE NEGOTIATED OUR WAY THROUGH THIS AS WE WENT ALONG, BUT NOW THEY HAD THE LAST SAY.

WHAT'S OUR RECOURSE IF THE PRESIDENT LINE ITEM VETOES? OUR RECOURSE IS WE HAVE TO PASS ANOTHER BILL, WHAT WE CALL A DISAPPROVAL OF THE VETO, BUT IN FACT WE PASS A NEW BILL. IF THE PRESIDENT VETOES THAT BILL, THEN WE PASS A DISAPPROVAL OR AN OVERRIDE OF THE SECOND LEGISLATION, AND THAT'S EXACTLY WHAT WE DID IN MILITARY CONSTRUCTION. SO THE PRESIDENT EVEN THOUGH WE OVERRODE HIS VETO IN 1ST CASE, BY TWO-THIRDS THE FIRST VETO OVERRIDE IN THE SENATE WAS ONLY BY TWO VOTES. ALL HE HAD TO DO WAS CHANGE TWO VOTES IN THE SENATE AND IT WOULD NOT HAVE BEEN OVERRIDDEN. SO, I AM CONVINCED WHEN YOU CHANGE THIS TO A TWO THIRDS MAJORITY THE PRESIDENT CONTROLS LEGISLATION NO MATTER HOW WIDE RANGING IT IS. SENATOR BYRD MAKES TWO IMPORTANT POINTS ABOUT THE LINE ITEM VETO AND I QUOTE FROM HIS TESTIMONY IN THE SENATE: "THE PRESIDENT'S ECONOMIC REPORT FOR 1985 INCLUDES A DISCUSSION ABOUT THE PROS AND

CONS OF THE ITEM VETO. IT ADMITS THAT THERE IS LITTLE BASIS TO CONCLUDE FROM THE STATE EXPERIENCE THAT AN ITEM VETO WOULD HAVE A SUBSTANTIAL EFFECT ON FEDERAL EXPENDITURES. IN FACT, IT SAYS THAT 'PER CAPITA SPENDING IS SOMEWHAT HIGHER IN STATES WHERE THE GOVERNOR HAS THE AUTHORITY FOR A LINE-ITEM VETO, EVEN CORRECTED FOR THE MAJOR CONDITIONS THAT EFFECT THE DISTRIBUTION OF SPENDING AMONG STATES." SENATOR BYRD GOES ON TO SAY IN HIS TESTIMONY THAT THERE ARE OTHER CONSTITUTIONAL PROBLEMS: THIS BILL CONTAINS A NUMBER OF LEGISLATIVE VETOES DECLARED UNCONSTITUTIONAL BY THE SUPREME COURT IN THE 1983 CHADHA CASE. THE COURT SAID THAT WHENEVER CONGRESS WANTS TO ALTER THE RIGHTS, DUTIES, AND RELATIONS OUTSIDE THE LEGISLATIVE BRANCH, IT MUST ACT THROUGH THE FULL LEGISLATIVE PROCESS, INCLUDING BICAMERALISM AND PRESENTMENT OF A BILL TO THE PRESIDENT. CONGRESS COULD NOT, SAID THE COURT, RELY ON MECHANISMS SHORT OF A PUBLIC LAW TO CONTROL THE PRESIDENT OR THE EXECUTIVE BRANCH. THE LINE ITEM VETO BILL, HOWEVER, RELIES ON DETAILS IN THE CONFERENCE REPORT TO DETERMINE TO WHAT EXTENT THE PRESIDENT CAN PROPOSE RESCISSIONS OF BUDGET AUTHORITY THIS BILL ENABLES THE PRESIDENT TO MAKE LAW OR UNMAKE LAW WITHOUT CONGRESS.

LET ME CONCLUDE BY SAYING THE CONSTITUTION IS CLEAR. APPROPRIATION BILLS START IN THE HOUSE, AND IF PASSED BY THE SENATE, THE BILL IS CONFERENCED, REPASSED BY BOTH BODIES, AND SENT TO THE

PRESIDENT WHERE HE CAN SIGN OR VETO THE BILL. ANYTHING LESS, CHANGES THAT VERY DELICATE BALANCE WHICH WAS SET UP UNDER THE CONSTITUTION, AND IF IT IS TO BE CHANGED IT CAN ONLY BE CHANGED BY A CONSTITUTIONAL AMENDMENT.

This is an Information Paper

Subject: Line Item Veto Act, and Constitutional validity

Background:
Line Item Veto Act, signed into law April 9, 1996 and became effective Jan 1, 1997, and it remains effective until Jan 1, 2005. The Line Item Veto Act is an enhancement to the Title X of the Congressional Budget and Impoundment Control Act of 1974. The Impoundment Control Act authorized the President to defer spending appropriations during the course of a fiscal year as long as Congress intended for those appropriations to be permissive rather than mandatory. The President could also propose rescission of an appropriation to Congress. But unless Congress approved the rescission the President was obligated to release the funds.

The Impoundment Control Act has not worked to reduce Federal spending, large deficits have persisted. The following alternatives have been considered by Congress to correct the situation:

a. Expedited rescission. This would amend the Impoundment Control Act to streamline the process for Congressional approval of rescissions proposed by the President.

b. Amend the Constitution to give the President a line item veto.

c. Change the appropriation procedures and present spending provisions as separate bills for approval or veto.

d. Congress elected to pursue an "enhanced rescission" procedure in the Line Item Veto Act. Reversing the appropriation presumptions under the Impoundment Control Act. Line Item Veto Act makes Presidential rescissions automatic in defined circumstances, subject to Congressional disapproval. The onus is on Congress to overturn the President's cancellation of spending and limited tax benefits.

The Line Item Veto Act gives the President the authority to cancel at any time within five days (excluding Sundays) after signing a bill into law, any dollar amount of discretionary budget authority, any item of new direct spending, and any limited tax benefit. (An item of direct spending is a specific provision that will result in "an increase in budget authority or outlays" for entitlement, food stamps, or other specified programs. A limited tax benefit is a revenue-losing provision that gives tax relief to 100 or fewer beneficiaries in any fiscal year, or a tax provision that provides temporary or permanent relief for ten or fewer beneficiaries in any fiscal year.

Cancellation takes effect upon receipt by Congress of the President's special message. Congress can restore a canceled item by passing a disapproval bill which is not subject to the President's Line Item Veto authority.

Discussion:

The Congressional Oath of Office is a powerful statement in its simplicity and brevity: "Do you

solemnly swear that you will support and defend the Constitution of the United States against all enemies, foreign and domestic; that you will bear true faith and allegiance to the same; that you take this obligation freely, without any mental reservation or purpose of evasion, and that you will well and faithfully discharge the duties of the office on which you are about to enter. So help you God."

Senator Byrd argued that the Line Item Veto Act alters the Constitutional system of checks and balances:

"I am sorry.....that we are not disturbed when measures come before this body the effect which would be to transfer power from the elected representatives of the American people, in the legislative branch, to the Chief Executive..."

"Let us speak plainly. This bill changes the existing process the President uses to rescind, or terminate, appropriated funds. That process takes place after the President signs a bill into law. It does not operate when he is signing a bill, as is the case with the real item veto used by governors. It is a misnomer to call this bill an item veto. Why do we not talk straight to the American people? Do we think they are unable to understand what we do in Washington, DC? How can we justify using false language and false concepts? This bill has nothing to do with an item veto. It is a change in the rescission process. This executive attitude of 'We know best' persists from decade to decade. The President's Economic Report for 1985 includes a discussion about the pros and cons of the item veto. It admits that there is little basis to conclude from the State experience that an item veto would have a substantial effect on Federal expenditures. In fact, it says that 'per capita spending is somewhat higher in States where the Governor has the authority for a line-item veto, even corrected for the major conditions that affect the distribution of spending among States. There are other constitutional problems with this bill. First, this bill will have a serious impact on the independence of the Federal judiciary. With enhanced rescission authority the President can delete judicial items, perhaps for punitive reasons. He has no such authority now. Second, this bill contains a number of legislative vetoes declared unconstitutional by the Supreme Court in the 1983 Chadha case. The Court said that whenever Congress wants to alter the rights, duties, and relations outside the legislative branch, it must act through the full legislative process, including bicameralism and presentment of a bill to the President. Congress could not, said the Court, rely on mechanisms short of a public law to control the President or the executive branch. The item veto bill, however, relies on details in the conference report to determine to what extent the President can propose rescissions of budget authority. Third, this bill enables the President to make law or unmake law without Congress. If Congress fails to respond to the President's rescission proposals within the thirty-day period, his proposals become law. In fact, as soon as the rescission message is submitted to Congress, the President's proposal takes effect. If Congress has to comply with bicameralism and presentment in making law, how can the President make law and unmake law unilaterally? Constitutional problems in the bill? Proponents say not to worry. Section 3 authorizes expedited review of constitutional challenges. Any member of Congress or any individual adversely affected by the item veto bill may bring an action, in the U.S. District Court for the District of Columbia, for declaratory judgment and injunctive relief on the ground that a provision violates the Constitution. Any order of the district court shall be reviewable by appeal directly to the Supreme Court. It

shall be the duty of both the district court and the Supreme Court to advance on the docket and to expedite to the greatest possible extent the disposition of a case challenging the constitutionality of the item veto bill. Evidently the authors of this legislation had substantial concern about the constitutionality of their handiwork. A provision for expedited review to resolve constitutional issues is not boilerplate in most bills. You may remember that when we included a provision for expedited review in the Gramm-Rudman-Hollings Act of 1985, the result was a Supreme Court opinion that held that the procedure giving the Comptroller General the power to determine sequestration of funds violated the Constitution. Why are we trying to pass a bill that raises such serious and substantial constitutional questions? We should be resolving those questions on our own. All of us take an oath of office to support and defend the Constitution. During the process of considering a bill, it is our duty to identify--and correct--constitutional problems. We cannot correct these here because we cannot amend the conference report. It is irresponsible to simply punt to the courts, hoping that the judiciary will somehow catch our mistakes."

Section 3 of the Line Item Veto Act authorizes expedited review of constitutional challenges .. "Any member of Congress or any individual adversely affected by the item veto bill may bring an action, in the U.S. District Court for the District of Columbia, for declaratory judgment and injunctive relief on the ground that a provision violates the Constitution. Any order of the district court shall be reviewable by appeal directly to the Supreme Court. It shall be the duty of both the district court and the Supreme Court to advance on the docket and to expedite to the greatest possible extent the disposition of a case challenging the constitutionality of the item veto bill..."

Under Article III, section 2 of the Constitution, the federal courts have jurisdiction over a dispute only if it is a "case" or "controversy." The Supreme Court has regarded the case or controversy prerequisite as a "bedrock requirement." Thus, efforts by Senator Byrd and other Members to obtain expeditious Judicial review was denied!

The City of New York and the Snake River Potato Growers, Inc concurrently sought Judicial review in the United States District Court for the District of Columbia.

Briefs were submitted by Senators Byrd, Moynihan, and Levin in support of the plaintiffs.

Judge Hogan's findings are summarized below. The background on the City of New York suit is also listed:

The City of New York and two hospital associations, brought suit. The suit is over Federal Medicaid payments to the State of New York. The Health Care Financing Administration (HCFA) of the Department of Health and Human Services provides Federal financial assistance by matching certain state Medicaid expenditures. This match is reduced by the revenue that the state receives from health care related taxes. The financial assistance is not reduced however if the taxes are broad-based and uniform.

New York State taxes its health care providers and uses this tax revenue to pay for health care for the poor. The state exempts certain revenues (those derived from particular charities) of some health care providers. On December 19, 1994, HCFA notified New York State that 19 of its tax

programs violated HCFA's requirements. The State of New York is appealing this determination IAW HCFA procedures. If HCFA deems New York's taxes impermissible, New York State law will require health care providers to pay the taxes retroactively. $2.6 billion may be subject to recoupment.

The balanced budget act of 1997 included a provision to correct this situation.

In August 1997, the President identified this provision as an item of new direct spending and canceled it using his authority under the Line Item Veto Act.

Under Article III, section 2 of the Constitution, the federal courts have jurisdiction over a dispute only if it is a "case" or "controversy." The Supreme Court has regarded the case or controversy prerequisite as a , "bedrock requirement."

Article I, section 7 of the Constitution sets forth dual requirements for the enactment of statutes: bicameral passage and presentment to the President. The consideration behind the Great Compromise, under which one House was viewed as representing the People and the other, the States, dictated that he Bicameralism and Presentment Clauses would serve essential constitutional functions. The Constitution requires that both the amendment and repeal of statutes also conform with these Article I requirements. The Constitution makes only four exceptions to the single mechanism by which provisions of law may be canceled:

Art I P2 cl 6
Art I P3 cl5
Art II P2 cl2
Art II P2 cl2

George Washington farewell address, If in the opinion of the People, the distribution or modification of the Constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates.

Separation of Power. The line item veto act impermissibly crosses the line between acceptable delegation of lawmaking and surrender to the President of an inherently legislative function. The Act enables the President to pick and choose portions of an enacted law to determine which ones will remain valid. The Constitution dictates that once a bill becomes law the President's sole duty is to execute that law. Amendments are Congress's responsibility.

The Line Item Veto Act empowers the President to make permanent changes to law. These laws cannot be revived even if the President feels that they are needed. The President is empowered to make changes to the Internal Revenue Code. Such delegations are unprecedented.

The separation of power between the President and the Congress is clear. The constitution limits the President's function to recommending laws he thinks wise and the vetoing of laws he thinks bad. The Constitution is not silent about who shall make laws which he President is to execute.

Judge Hogan found that on 12 Feb 98:

"Therefore, because the Court finds that Plaintiffs have demonstrated the requisite injury to have standing and , furthermore, that the Line Item Veto Act violates the provisions of Article I; section 7 of the United States Constitution and the separation of powers doctrine, this Court declares that the Line Item Veto Act is unconstitutional. Accordingly, the Court will grant Plaintiffs' Motions for Summary Judgement and deny Defendants' Motions to Dismiss and Motion for Summary Judgment. An Order will accompany this Opinion."

NOTE: The information listed above was excerpted from the CRS Synopsis on the line item veto, the Congressional Record, and the Order accompanying Judge Hogan's findings.

Les Dixon
20 February 1998

Mr. GOSS. Thank you, Mr. Murtha, very much. That was very rich testimony, as I knew it would be, and very helpful. I can tell you, as you know, we spent a lot of time on the process.

Mr. MURTHA. Yes.

Mr. GOSS. And got a lot of views on it. May I ask one question you didn't speak much to and that is the question of accountability. Do you think the proposition helps accountability at all? It is my view that it does. I think there is evidence to that. Do you have a similar view?

Mr. MURTHA. Well, I think it is too early to be able to judge. For instance, our oversight, there is no question when you have a bill as large as ours, it is very difficult to have oversight. Many Members come to us and we depend on them to tell us what they really believe is a good thing. We try to make as good a judgment as we can about a particular project.

The staff does diligent work. We try to review Member requests in plenty of time in advance so that we can ensure it is really something that is important to the Nation and our national defense before we accept it in our committee.

But, it is just too early, to tell whether accountability is a concern.

Mr. GOSS. Mr. Chairman, did you have a question?

Mr. SOLOMON. No. I am going to have to leave in just a few minutes.

John, I would assume you want your entire statement to be in the record without objection?

Mr. MURTHA. Yes.

Mr. GOSS. I have already done that.

Mr. SOLOMON. Very good.

Mr. GOSS. While you were coming to the dais, I stated that.

Mr. GOSS. Mr. Frost—excuse me. Are you through?

Mr. SOLOMON. If I could, since Martin Frost was late he needs to be penalized.

But, John, I agree with you wholeheartedly that we should have a constitutional amendment. That was the first thrust in the first place. Unfortunately, we had some good responsible, respected members that disagreed with that approach. They wanted to go to—even beyond what we did into some kind of revenue enhancement type of thing, and we just didn't have the votes for it.

So by the time we got all through with the negotiations with ourselves, both sides of the aisle, with the Senate, we agreed to try the statutory approach to see how it works out. In my opinion, you heard my testimony, it has worked. I think the military construction budget, which you have the privilege of working on, was a perfect example of Congress working with it. And there the President—I don't know that he was intimidating more than negotiating, and there is, I guess a fine line between that. But at any rate, you very rightly opposed the attempt by the President to change the priority spending, and then he vetoed it and the Congress worked its will.

Mr. MURTHA. Mr. Chairman, we have so little discretionary money, and 90 percent of the budget that the White House sends over, whether it is a Republican or Democrat White House, is ap-

proved by us. When you let them have the last say, it changes the balance of power and that is what concerns me. That is why if the balance of power is going to be changed, and I obviously wouldn't vote for that change, it has to be by constitutional amendment.

Mr. SOLOMON. Thank you.

Mr. GOSS. Thank you. Mr. Frost.

Mr. FROST. Jack, wasn't the problem on military construction line item veto that there wasn't consultation with Members prior to the exercise of that; that there was inaccurate information that the staff had, the President's staff had, and there wasn't the opportunity for Members to point out what was accurate and what was inaccurate?

Mr. MURTHA. Well, it was completely inaccurate. Whatever their rationale, they were completely inaccurate in the message they sent over to us. There was absolutely no consultation at all. They didn't talk to Chairman Packard. They didn't talk to Bill Hefner. They didn't talk to anybody about this.

I am not sure that is necessary, but they didn't even talk to the Defense Department, who could have told them very readily that there was a problem.

Now, they learned from that. I am not saying that the later line item vetoes were as egregious. But my whole argument is that this changes the balance of power between the executive branch and the Congress.

Mr. FROST. I have no other questions.

Mr. GOSS. Thank you.

Mr. Linder.

Mr. LINDER. Jack, you mentioned there is no evidence of the States with the line item veto having a reduction in spending. Do you know offhand how many of the States which have line item veto authority also have constitutional constraints against deficit spending?

Mr. MURTHA. That is a good point. I don't know that. That is an important point. As we researched this, we found more and more things we were trying to find out and couldn't get to. But that is certainly a good point. For instance, Pennsylvania has to have a balanced budget and it also has the ability to line item veto.

Mr. LINDER. So they are going to spend up to that balanced budget?

Mr. MURTHA. They are going to spend up to that amount.

Mr. FROST. Would the gentleman yield? Most of the States have a constitutional constraint against deficit spending.

Mr. LINDER. The other question I have is for your opinion on—there is a growing body of legal opinion that believes that the President effectively has line item veto authority without anything we do. In this respect, virtually every spending item in the final budget was once a vote at some subcommittee level of some committee, whether it was the Seawolf or any other item in the military budget, and that the President can veto that action of that committee at that time. Do you have any opinion on that?

Mr. MURTHA. Well, as you know, during the Nixon administration, they had impoundments and they tried not to spend the money. That is when Congress stepped in and said, okay, we will force the President to spend that money.

They have rescissions now. They have reprogrammings. There is all kinds of ways a President can not spend the money.

They send us reprograms, as you know, almost every day in defense. They send us rescissions, substantial rescissions, continually. So they have tremendous influence. But in the end, we are able to force them to spend the money, unless we made a mistake, and in some cases we do. We don't argue and we let them reprogram, if they made a mistake when they made the original request. But I think when we passed the balanced budget resolution, we didn't let the President be part of that. We said, okay, that is between the House and the Senate setting the priorities.

We set our own rules about how that happens. I think that was important from a constitutional standpoint, that the President should not be part of that.

Now, the balanced budget amendment, on the other hand, which I voted for, I think was exactly appropriate, and I think—and I appreciate that you put into law that if the budget is balanced, this thing sunsets. I think that is an important element of this whole thing.

The biggest mistake I see is you have to vote on it twice afterwards because the votes are identified. And a popular President has tremendous leeway with Members.

Mr. GOSS. Mr. Hastings.

Mr. HASTINGS. Just maybe an observation rather than a question. I come from a State where the governor has real extensive powers in line item veto; it goes beyond budget. He can line item veto any other policy bill. And it seems to work pretty well, frankly, in our State.

However, having served in the legislature and observing others, the legislature has been very creative in ways that they develop policy and/or budgets so in many cases it is virtually impossible for the President or the governor to line item anything because it has a ripple effect or a domino effect on other areas.

And I would just make an observation that maybe that is what will be involved here in this body, as we go down the line, if the line item veto is sustained by the courts. I would just like your observations.

Mr. MURTHA. We have a recourse, and the recourse is not to reprogram anything; just to not reprogram anything they want until we get the—there is no question in the end, the power of the purse, in my estimation, is the key element of our influence nationally. And the President's historical record will be what he passes in legislation. You know, Congress is unique in our ability to come up with answers to offset whatever power the President has. So it can be worked. It is convoluted. It is difficult, because most of the reprogrammings are legitimate reprogrammings and you are holding hostage things that really should be done. But there is no question, if you go to the agency and you say to them, folks, if you line item veto our bill, we are not going to reprogram anything. Now, whether we can hold to that, I don't know.

Yes, sure, we have already been thinking ahead of ways to put language in the bill. There are all kinds of things we think we could do, but I think it just gets back to, I just don't think it is good to go through that kind of a thing.

I think we had a unique situation at one time where there was a deficit out of control. I think it sounded like this was the way to go, and it certainly was popular. But I think those times have gone by now and I think we have to be very careful in giving any President additional influence.

Mr. HASTINGS. Thank you.

Mr. GOSS. Thank you. Well, I guess what we are trying to do is to figure out what happened the first year of this procedure, and it is clear that there was a learning curve for the President and White House, and it is clear that the Court is going to take this under advisement, and it is clear that we are going to be readdressing the issue one way or another again, whether we are monitoring it or dealing with something that the Court has left us with.

And your views either way are important to us, and we thank you very much for taking the time and coming up and sharing them with us this morning.

Mr. MURTHA. Thank you.

Mr. GOSS. I think we will be back here again talking more about this later.

Mr. MURTHA. I think you are right, later this year.

Mr. GOSS. I expect, Mr. Murtha. Thank you.

Mr. MURTHA. Thank you very much, sir.

Mr. GOSS. At this time, we are pleased to call Representative John Spratt, Democrat of South Carolina.

STATEMENT OF HON. JOHN M. SPRATT, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF SOUTH CAROLINA

Mr. SPRATT. Thank you, Mr. Chairman.

Mr. GOSS. We welcome you here. I understand we have a written statement which is accepted without objection, and we welcome your comments.

Mr. SPRATT. Thank you, Mr. Chairman.

I would like to address the Line Item Veto Act in general and some issues related to its implementation and some alternatives to it since I doubt its constitutionality. I have always had doubts about the constitutionality of the Line Item Veto Act. I know that Congress can and has delegated broad authority to the President for carrying out the law, executing the law. But I am not sure that we can use the delegation of authority to completely turn the flank of the presentment clause, and I question whether you can give the President particularly the authority not to execute parts of the law that he picks out solely on his own.

The Supreme Court has made clear that the laws are unmade in the same way they are made, by passing a bill in both Houses and signed by the President. I am not surprised that the district court has struck down the line item veto and I won't be surprised if the Supreme Court concurs. But I understand this is not a public debate on the constitutionality of it. I voted for the bill, by the way. After damning in it that manner, I should add that I said, let's send it to the Courts and end this debate.

But I do think that ultimately it will meet its defeat.

Let me discuss some problems that have arisen with implementation and some alternatives to it in particular.

Mr. GOSS. That was the purpose of this hearing, actually. As you know, we are going to let the folks across the street do their jobs and we want to focus pretty much on process, although your observations are taken into consideration.

Mr. SPRATT. Three times in recent years, I presented alternatives on the floor on a line item veto that seemed to me to be both constitutional and appropriate to the executive branch and the legislative branch. I should, in all candor, admit that these were not my work product always. I borrowed liberally from others.

Tom Carper, I think, first conceived the idea of expedited rescission; Tim Penny and Charlie Stenholm on my side came up with the idea of enhanced rescission. We merged the two, did a little body and fender work on them, and got a bill that was enhanced and expedited rescission. It was brought to the floor, passed in various forms three times. The last time it passed by a margin of 342 to 69. These bills build on the old dictum that the President proposes and the Congress disposes. In particular, they add to the President's authority to rescind appropriations which was granted by Impoundment Control Act of 1974.

Under this act, the President can propose that budget authority be rescinded by Congress for a period of 45 days of continuous session. The President can then withhold this budget authority from spending by the agencies, pending congressional action. By and large, this law has worked pretty well, but it has one glaring flaw which our bill attempted to correct. The President is not guaranteed, even assured, a vote on his proposed rescissions.

If Congress disregards his request, the President must release the disputed funds to the agency within the 45-day period. The President therefore has absolutely no assurance that we will take any action whatsoever on his request.

My proposal would amend the Impoundment Control Act by giving the President an additional option. He could send to Congress a rescission request within a certain period after the enactment of the appropriations bill. That request would be converted here into legislative language; sent to the Appropriations Committee; within a short period, say a week, the committee would then report it to the floor for an up or down vote. Congress would thus have to vote. The President would be assured of a vote and formally proposed within a time certain.

Now, this doesn't encompass all the issues addressed by the line item veto. It doesn't address, for example, targeted tax breaks or new entitlement benefits, but it does ensure the President a vote on the rescission requests that are not just line item, so to speak, but may be brought up lump sum appropriation accounts. It allows the President to propose reduced spending for an appropriation account rather than an all or nothing elimination.

The main point is that this approach, like the line item veto, allows the President to single out items of funding that should be eliminated or reduced in his opinion and to expose this spending to public scrutiny.

Unlike the line item veto, it makes Members of Congress accountable for decisions to maintain or eliminate this kind of spending.

When the act was passed, the Line Item Veto Act, I offered this enhanced and expedited rescission amendment once again, a fourth time, as a supplement, not as a substitute but as a supplement to the bill. I argued that this authority might just come in handy if the Supreme Court found the line item veto unconstitutional.

Members on your side, who had voted for it before, decided that if they voted for it this time, then the Senate might just take the easy way out and adopt and enhance an expedited rescission as opposed to going with the stronger version of the line item veto.

Nevertheless, if the line item veto is struck down by the Supreme Court, then I would urge the committee to take another good look at enhanced and expedited rescission. I think it is a worthy alternative.

If it survives judicial review, there are some aspects of the bill that also deserve close attention by this committee. I list them briefly and with permission, I will send a more thorough discussion for the record.

First of all, the line item veto simply doesn't allow OMB enough time to do its job. Five days is not enough time for OMB to scrub a bill and find all the items that are buried in it, much less make a thoughtful recommendation to the President.

Second, this short time span gives Members, us, an incentive to bury items in obscure and hard to find places or in hard to interpret language. Because of this perverse incentive, the Line Item Veto Act could actually accomplish its opposite purpose. It could diminish congressional accountability. It could lead to gimmicks like this.

If Congress creates line item—thirdly, if Congress creates a line item at the last minute or at the end of a conference, they are especially unlikely to be found in time for review by the President.

Fourth, the President can only make a cancellation if he finds that his action would reduce the deficit. This criterion has lots of ambiguities to it. Over what period of time? In every year? What if there is a surplus, as we may have this year? Is the line item veto still operative? What if there is an on-budget deficit but a total budget surplus? What if canceling a line item would decrease the on-budget deficit but increase the total budget deficit?

Fifth, in calculating whether a cancellation decreases the deficit, need OMB follow strict scorekeeping precedents or may it take indirect but real effects into account?

Sixth, there are also problems with the provisions stating that an earmark and an authorization bill can create a line item in a lump sum appropriation bill. Does this apply only to subsequently enacted appropriations or can it apply if a later authorization creates a line item in a prior appropriation? And what does this do to the time line the President must follow in sending up item vetoes?

Seventh, the Line Item Veto Act applies to provisions of the bill creating or expanding entitlements, but no one knows for certain what a provision is. To make an element of such a bill immune from cancellation, one could draft large portions of the bill as a single run-on sentence. This ambiguity would create, therefore, and

does create an incentive for clever drafting and it, too, could decrease congressional accountability.

On the tax side, Congress decided that we wanted to control the determination of tax cuts targeted to very small groups by having the Joint Committee on Taxation prepare a list of any such items within a tax bill. They would be appended, I think, to the front of the tax bill, a listed targeted tax benefit. Items on this list would be vetoable by the President.

This practice would apply to appropriation bills and entitlement bills that might remove the ambiguities and the incentives to hide and draft badly.

In short, the necessarily broad definitions in the line item veto create ambiguities. These ambiguities may encourage the wrong response from Congress, such as obscure items or convoluted drafting. A better approach might be for Congress to be explicit about line items up front by listing them in committee and conference reports.

There is a feature added to the Line Item Veto Act that raises a new set of implementation problems called the lockbox. It is not essential to the main concept of the act, which would give the President a tool to root out items that he regarded as wasteful or unwarranted but it presents side effects that were never anticipated.

For example, just this last summer, Congress and the President negotiated a specific agreement about the level of defense spending. Some wanted more, some wanted less, but in the end we reached an agreement that both parties in both Houses could live with. The President then cancelled items in the military construction appropriations bill and the defense appropriations bill.

The effect of the lockbox was that total funding for defense had to be lower than the agreed upon level. This is unfortunate institutionally; it shouldn't take a two-thirds vote of both Houses to maintain an agreement that has already been ratified by the Congress and the White House.

There was another unfortunate consequence. Under the act, Congress could choose to restore the cancelled funds, arguably special purpose items, but could not choose to use the same amount of funding more broadly for national defense purposes. This is ironic. This is a law that was intended to favor general purposes of a local interest, but in this case it had the opposite effect.

Let me go on and say that the utility of the line item veto—let me just wrap it up because the rest of it is in my statement here. I think, Mr. Chairman, that the utility of the line item veto as a tool for balancing the budget has been overstated.

Mr. Clinton was given—the President was given enormous authority by the Line Item Veto Act, but he used it sparingly, and with small impact on overall spending. In the one case where he used the veto vigorously, the Military Construction Appropriations Act, Congress had a little trouble mustering the two-thirds vote needed for an override. Nevertheless, the item veto, and enhanced and expedited rescission, in my opinion served two very essential purposes, which make their role in the budget process highly desirable.

First of all, they inhibit pork barrel spending by making Members who would seek to piggy-back items onto an appropriation bill know that there will be an item-by-item scrub of the bill when it reaches the President and quite possibly public exposure of their provision.

Secondly, they give the President the means for removing wasteful and unwarranted spending and subjecting it to scrutiny that it did not receive in committee or on the floor.

They also give the President the assurance that the list of items that he wants to cut out will not be dropped into a file and forgotten but will be acted upon with dispatch. This process increases accountability and the public confidence in the way we spend money. That is why I proposed an enhanced and expedited rescission. That is why I voted for the line item veto, though I doubted its constitutionality. That is why I think we should have these procedures in the budget process and should keep perfecting them. I think it will take a lot of work before we get them really to work right but I think they are a critical part of the budget process.

[The statement of Mr. Spratt follows:]

Statement on the Line-Item Veto Act

Congressman John Spratt

Subcommittee on Legislative and Budget Process
Committee on Rules
U.S. House of Representatives

Thank you for the opportunity to discuss the Line-Item Veto Act. I would like to address the law in general, issues related to its implementation, and alternatives to it.

I have always had doubts about the constitutionality of the Line-Item Veto Act. I know that Congress can delegate broad authority to the President as to the execution of a law. But I question whether Congress can delegate to the President the authority not to execute parts of a law that he picks out solely on his own. The Supreme Court has made clear that laws are unmade in the same way they are made: by passing a bill in both houses that is signed by the President. I am not surprised that the District Court has struck down the Line Item Veto, and I will not be surprised if the Supreme Court concurs. But today's hearing is not a constitutional debate. It is a discussion of how best to implement budget-making between two branches of the government -- the Executive and Legislative.

Expedited Rescission Authority as a Constitutional Alternative

Three times in recent years, I proposed alternatives to an item veto that seemed to me both constitutional and appropriate to the roles of the Executive and Legislative branches. Each time my bill passed the House but was not taken up by the Senate. H.R. 2164 passed the House in October of 1992; H.R. 1578 passed the House in April of 1993; and H.R. 4600 passed the House in July of 1994. All passed by healthy margins, the last by 342 to 69.

These bills build on the old dictum that "the President proposes and Congress disposes." In particular, they build on the President's authority to rescind appropriations, granted by the Impoundment Control Act of 1974. As you know, the Impoundment Control Act and the Congressional Budget Act were enacted as a single law in 1974.

Under the Impoundment Control Act, the President can propose that budget authority in appropriations bills be rescinded by Congress. For a period of 45 calendar days of continuous session of Congress, the President can then withhold this budget authority from the agencies, pending congressional action on his rescission request. By and large, this law has worked well, but it has one glaring flaw: the President is not guaranteed a vote on his proposed rescissions. If Congress disregards his request, the President must release the disputed funds to the agency when the 45-day period expires. The President has no assurance of an up-or-down vote on his rescission requests.

My proposal would amend the Impoundment Control Act by giving the President an

additional option: he could send Congress rescission requests within a certain period after enactment of an appropriations bill; that request would be converted into legislative language and sent to the Appropriations Committee and then to the floor under expedited procedures. Congress would thus have to vote on a rescission bill in the form proposed by the President within a time certain.

This approach does not encompass all issues addressed by the Line-Item Veto Act. For example, it doesn't address targeted tax breaks or new entitlement benefits. But it ensures the President a vote on rescission requests that are not merely "line-items" but may be broader "lump sum appropriation accounts"; and it allows the President to propose reduced funding for an appropriation account rather than all-or-nothing elimination. The main point is that this approach, like the Line-Item Veto, allows the president to single out items or funding that should be eliminated or reduced, and to expose such spending to public scrutiny. And like the Line-Item Veto Act, it makes members of Congress accountable for a decision to maintain or eliminate such spending.

When the Line Item Veto Act was passed, I offered an enhanced and expedited rescission amendment as a supplement to the bill. I argued that this authority might come in handy when the Supreme Court found the item veto unconstitutional. Although these versions had passed the House by large margins, Republican members voted against the supplementary rescission, partly out of concern that the Senate might adopt it and reject the stronger item veto. If the Line Item Veto Act is struck down by the Supreme Court, I urge this committee to take another look at enhanced and expedited rescission.

Implementation Problems with the Line-Item Veto Act

If the Line-Item Veto Act survives judicial review, there are aspects of the bill that deserve scrutiny by this Committee. I will list them briefly, and with your permission, I will include a more thorough discussion for the record.

(1) The Line-Item Veto Act does not allow OMB enough time to do its job. 5 days is not enough time for OMB to scrub a bill and find all the items buried in it, much less make a recommendation to the President.

(2) This short time span gives members an incentive to bury items in obscure and hard-to-find places, or in hard-to-interpret language. Because of this perverse incentive, the Line Item Veto Act could diminish congressional accountability.

(3) If Congress creates line-items at the last minute, or at the end of a conference, they are especially unlikely to be found in time for meaningful review by the President.

(4) The President can only make a cancellation if he finds that his action would "reduce the deficit." This criterion has many ambiguities: Over what period of time? In every year? What if there is a surplus — is the Line-Item Veto Act still effective? What if there is an on-budget deficit but a total budget surplus? What if canceling a line-item would decrease the

on-budget deficit but increase the total-budget deficit?

(5) In calculating whether a cancellation decreases the deficit, need OMB follow strict scorekeeping precedents, or may it take indirect but real effects into account?

(6) There are also problems with the provision stating that an earmark in an authorization bill can create a line-item in a lump-sum appropriation bill. Does this apply only to subsequently enacted appropriations, or can it apply if a later authorization creates a line-item in a prior appropriation?

(7) The Lin Item Veto Act applies to "provisions" of bills creating or expanding entitlements, but no one knows what a "provision" is. To make an element of such a bill immune from cancellation, one could draft large portions of the bill as a single, run-on sentence. This ambiguity therefore creates an incentive for clever drafting and may decrease congressional accountability.

(8) On the tax side, Congress decided that we wanted to control the determination of tax cuts targeted to small groups by having the Joint Committee on Taxation prepare a list of any such items within a tax bill, and items on this list the President may veto. If this practice were applied to appropriations bills and entitlement bills, it would remove the ambiguities and the incentives to hide and draft badly.

In short, the necessarily broad definitions in the Line Item Veto Act create ambiguities. These ambiguities may encourage the wrong response from Congress, such as obscure items or convoluted drafting. A better approach might be for Congress to be explicit about line-items up front by listing them in committee and conference reports.

The Lock-box Feature

The "lock-box" aspect of the Line-ItemVeto Act raises a new set of implementation problems. The "lock-box" is not essential to the main concept of the Act, which was to give the President a tool to root out items that are wasteful or unwarranted, or serve some purely local rather than national interest.

The lock-box can present side effects that were never anticipated. For example, just last summer, Congress and the President negotiated a specific agreement about the level of defense spending. Some wanted higher spending, some lower, but the agreement was at a level that the President and a majority of both the House and Senate could live with. The President then canceled items in the Military Construction Appropriations bill and the Defense Appropriations bill. The effect of the lock-box was that total funding for defense had to be lower than the agreed-upon levels. This is unfortunate institutionally — it should not take a two-thirds vote of both houses to maintain an agreement already ratified by Congress and the White House. There was another unfortunate consequence. Under the Act, Congress could choose to restore the canceled funds, arguably special-purpose items, but could not choose to use the same amount of funding more broadly for national defense purposes. This is ironic: a

law intended to favor general purposes over local interests in this case had exactly the opposite effect.

(1) The lock-box works through reductions in the discretionary caps and through scorekeeping adjustments to the PAYGO scorecard. While this approach has the advantage of using an existing mechanism, it begs the question: What happens when the caps and PAYGO rules expire after fiscal year 2002?

(2) For discretionary appropriations, the lock-box does not shut immediately after a presidential cancellation. The reason is that the discretionary caps are not reduced until after a period for congressional reconsideration expires. But this means that the lock box may not work.

(3) For tax and entitlement cancellations, the lock box means that Congress can restore the entire item that was canceled, but cannot negotiate a compromise that restores a smaller amount. This is another ironic result: after a cancellation, it may be procedurally easier to do a larger entitlement increase or tax break than a smaller one.

Need for Spending Review and Item-by-Item Rescission Authority

The utility of the Line Item Veto as a tool for balancing the budget has been overstated. President Clinton was given substantial authority by the Line Item Veto Act, but he used it sparingly and with small impact on overall spending. In the one case where he used his veto vigorously, the Military Construction Appropriations Act, Congress had little trouble mustering the two-thirds needed for an override. Nevertheless, the item veto and enhanced, expedited rescission serve two essential purposes, which make their presence in the budget process desirable. First, they inhibit "pork barrel" spending by making members who seek to piggy-back items onto an appropriations bill know that there will be an item-by-item scrub of the bill when it reaches the President, and quite possibly, public exposure of their provision. Second, they give the President the means for removing wasteful and unwarranted spending, and subjecting it to scrutiny that it did not receive in committee or on the floor. They also give the President assurance that the list of the items he wants to cut out will not be dropped in a file and forgotten, but will be acted upon with dispatch. This process increases accountability and the public's confidence in the way we spend their money. That's why I proposed enhanced and expedited rescission; that's why I voted for the item veto, even though I doubted its constitutionality; and that's why I think we should have these procedures in the budget process, and should keep perfecting them until they work well.

Mr. GOSS. Mr. Spratt, thank you very much. You have been a very constructive participant in this debate for a long time and that testimony proves it. I appreciated very much what you have had to say. I particularly appreciate you addressing the specifics on the implementation problems. We had some other testimony on that. That primarily is where we are focusing until the Court speaks, and your testimony has been helpful on that. I agree with you on accountability questions and the bias questions.

Doc, do you have any questions?

Mr. HASTINGS. No questions.

Mr. GOSS. Thank you very much.

Mr. SPRATT. For the record, I want to give some credit to our very able staff director, Tom Kahn and Richard Kogan, who has been around here as long as the budget process has been here and made literal contributions to the drafting of this.

Mr. GOSS. As long as there is a budget process there will be attention on the process and there will be staff giving us help and guidance, and your remarks are well chosen.

Mr. SPRATT. Thank you very much.

Mr. GOSS. Thank you very much.

Mr. GOSS. We have Mr. Dan Miller of the great State of Florida, the extraordinary beautiful West Coast district of Florida. We welcome you here this morning, the distinguished member of the Budget Committee.

Mr. MILLER. And Appropriations.

Mr. GOSS. Do we have a written statement from Mr. Miller?

Mr. MILLER. I have one.

Mr. GOSS. We do. It will be accepted without objection into the record. And we would welcome your comments.

STATEMENT OF HON. DAN MILLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. MILLER. I have a written statement I would like to have for the record.

Mr. GOSS. Without objection.

Mr. MILLER. I sit both on both the Budget and Appropriations Committees and I was a strong supporter of the line item veto. And I am one of 23 Republicans, including 3 on the Appropriations Committee, that stayed with the President as far as supporting his position on the military construction program.

So I have written the President and encouraged him to use it last year. I said I felt he should have the literal use of the line item veto. There are items that were available, they were available on the Internet. It was a very obvious list. Senator McCain published a long list of each appropriation bill that was readily available for everyone to see potential items that would qualify.

The problem was it was not handled very well this year. The President was inept in his use of it. He first made use of it on the military construction and, as Mr. Spratt said, there were a lot of mistakes made there and that was the reason it was overridden. A number of the items should not have been line itemed and it was just poorly handled the first major opportunity he had. And then

for some reason, in the next, I think, 8 appropriation bills he used it very sparingly and only picked a limited number of items.

The number of items that are available, that should be addressed by the line item veto to go after this wasteful spending or the pork barrel spending, which is targeted in one specific district, is quite large. I have seen it—and it is not fair to the rest of the Members. I sit on Labor-HHS, for example, and I would use one illustration, which is library money. I question the need for the Federal Government to be providing lots of money for local libraries, but there is a pot of money that should be available in a competitive process that every library system in the country should compete for and they should be rated in some competitive rating format.

However, if you look at that particular bill, it is loaded with specific items in specific cities for specific libraries. I mean, those are the things that—you know, that is not what that program was designed for and there is program after program like that where individual, whether it is libraries, what have you, were targeted for a special program and they are not—so that means areas in Washington State or Florida, you know, have less money to work with, and so there is a certain fairness to the whole process and that is very disappointing.

For political reasons, we are afraid to touch certain Members of Congress and I think that is unfortunate too. But we need to have a way to try to discourage people from having that. What happens a lot of time in appropriations bills, the bill will leave the House with no pork in it. It goes to the Senate, a lot of pork is added, and by the time a conference report gets in, it is loaded with pork, and that is just the process, unfortunately. And by the time we get to our conference report, which has the most pork in it, we don't have a chance to have the Members delete individual items, so it is up to the President to address a lot of the issues. So we need to encourage the President to use it, but he needs to obviously use it wisely and in as much of a nonpolitical fashion as possible. So whatever we can do to encourage the use of it more, I would support.

[The statement of Mr. Miller follows:]

Testimony from Mr. Miller (R-FL)
on the Line Item Veto
3/12/98

Mr. Chairman, thank you for the opportunity to testify this morning. I appreciate the chance to explain my interest in and assessment of the line item veto.

I truly find myself in a unique situation on this issue. Last year I was one of only 23 Republican Members, and one of three Appropriations committee member, to support the President's vetoes within the FY 98 Military Construction Appropriations bill. In addition to these votes, I also wrote the President a congratulatory letter recommending that he make even more liberal use of this tool. While I may not support each individual elimination made by the President this past year, I believe that this type of review is beneficial, if not necessary, for the entire budgetary system.

As a member of the Appropriations committee, I am frustrated by the constant diversion of federal resources to pet programs which only serve to benefit individual districts or constituencies. I have seen appropriations bills develop in the House without any "pork-barrel" spending only to have them leave Conference with millions upon millions of dollars of designated Pork-Barrel projects. I was shocked, in fact, to find that I am in the minority, because I honestly believe that just because a Representative or Senator sits on a particular committee or subcommittee, that does not make their projects any more deserving of taxpayer funded resources.

If a program is so worthwhile, then it should be able to compete on a level playing field for these resources and it should be able to withstand the scrutiny of the Administration. That is why I support the line item veto as a tool for reigning in profligate government spending. The line item veto provides an opportunity for reflection that is not currently in the system. If Members are concerned that their individual projects could be eliminated or exposed to light of day for scrutiny, then it might give them second thoughts about pursuing pork.

In the Committee invitation letter, you asked that I comment on my assessment of the way in which the specific provision of the law and its procedures have functioned. I have to say candidly that I am disappointed in the Administration. I am disappointed because I do not think they used this powerful new tool correctly or proficiently. The first big test for the President's use of this controversial measure was the FY 98 Military Construction Appropriations bill. To be as effective as possible the Administration should have undertaken an in-depth, contemplative look at the bill, and then selected their targets thoughtfully.

Instead, they jumped in head first and eliminated a number of items that they later couldn't justify. This ineptness on the part of the Administration proved their critics right and soured even the most ardent supporters of the line item veto. Then to make matters worse, the President cowered from future confrontations by taking only minuscule items from the rest of the appropriations bills.

In the eight other bills, which were subject to the line item veto--only $200 million worth of funding was removed-- barely two-thirds of the amount taken from Military Construction.

Effectively, the bite is gone from the use of the line item veto, and only the bark is left. Since most Members no longer see the veto as a potential threat, the number of individual programs will only continue to increase--taking more and more resources from competitive or deserving programs. This is particularly devastating during this time of declining resources. Congress has set some pretty tough goals for itself over the next few years in holding to the budget caps. This year alone discretionary funds are only allowed to increase by one-half of 1 percent. We need every effective tool we can get to make sure we keep our promise to the American people and keep to these much touted discretionary caps.

When I ran for Congress in 1992, I promised my constituents that I would fight to reduce the size and scope of the federal government – a big part of that is the fight against pork barrel spending. And while I do think we have a lot to proud of -- we still have a long way to go. We still have an obligation to this nation and to the American people to make sure that federal resources are being spent on federal priorities. Funding that benefits one specific district or programs that appease one particular special interest, have the effect of diverting resources. I support the line item veto – because Congress has shown it can not police itself. Someone has to stand up and say no more to "pork-barrel" spending and unnecessary projects.

Mr. GOSS. Thank you very much, Mr. Miller. I appreciate your consistent fiscal responsibility and encouragement on the line. I too was disappointed we didn't get a better chance to see how this would work by more assiduous use by the President. But in terms of the process, is there any recommendation you have that is different than your testimony here on what we should do to adjust the process?

Mr. MILLER. Well, we have to make sure we pass Constitutional muster.

Mr. GOSS. The folks across the street are going to do that.

Mr. MILLER. Otherwise, no, we just need to encourage the President to use it in a more liberal fashion. It is ineffective right now. It doesn't bother anybody to put pork in the bill. The idea was to discourage our Members on both sides of the aisle from adding pork, but there is no discouragement whatsoever right now.

Mr. HASTINGS. Just one question. In the legislation now, the line item veto can only be used to reduce the deficit. Would you be in favor of a provision to say that the future Presidents, when we are in a balanced situation, could use the line item veto at any time?

Mr. MILLER. What do you mean? Well, yes. It would just increase our surplus. I would oppose using the line item veto and let someone else spend it for some other purpose; to take away from one library and give it to another. That is not the way it should be done.

Mr. HASTINGS. As I understand the law now—we had testimony on this yesterday, there is a gray area—the line item veto can only be used to reduce the deficit. My question to you is, would you be in favor of giving the President line item veto if in a magic time we have no deficit?

Mr. MILLER. I think the line item veto should continue but the goal is to get rid of pork barrel spending.

Mr. GOSS. Thank you very much.

For those Members here, as a courtesy, let me tell you that the order of approach is going to be Mr. Stenholm, then Mr. Neumann, and a panel by Mr. Upton and Mr. Roemer. We are using about 5 minutes a Member so you can adjust accordingly.

Mr. Stenholm, a distinguished gentleman from Texas, who has been a longtime participant in this discussion, who has given much value to the debate. We welcome you, Charlie. We have a statement which will be accepted for the record without objection.

STATEMENT OF THE HON. CHARLES W. STENHOLM, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. STENHOLM. Thank you very much, Mr. Chairman and Mr. Hastings. I appreciate the invitation to testify before this committee and I probably can sum up my feelings today by stating Congress gave the President a bad process and the President used it badly, and I hope that the result of these hearings is we will improve upon both.

Having been on the receiving end, making a few speeches on this subject over the years, never having been supportive of line item veto as much as Mr. Miller who was just before us, because of my concerns about the constitutional shift of power that line item veto

would give to a President, and always, though, having come around to the concerns of the pork barrel spending and the additions that get into conference reports, and admit that is a problem and needs to be solved.

We came around to the support of what came to be modified line item veto or expedited recission process that Mr. Spratt spoke to and I still think is a much, much preferable process for the Congress to use, because I have always said if any President wants to line item veto Charlie Stenholm's favored bill, i.e. my pork, as you would say, fine, I am perfectly willing to give any President that right, but all I ask is a chance to have a majority vote. If I can convince a majority of my colleagues that this is not a wasteful spending, then, fine; if the President succeeds, fine, I will lose.

But giving a President one third plus one minority override is really changing the balance of power, and now having the first two line items having been bills I was interested in, one was the military construction bill and we ended up winning, we went through the process and had two-thirds vote, et cetera. The other was on the cooperative tax question, and on that one we had a compromise worked out.

But I want to talk a little more in detail about that. I still think and I hope as a result of this process, that we will recognize that as the negotiations on the farmer cooperative provision, evidence of the tremendous amount of leverage that a President has came into view. The President offered to work with us to enact a modified version of the proposal because we found out the advice he got regarding the merits of the bill was not totally accurate. Then he offered to work with those of us that believed in it bipartisanly.

Mr. Hulshof and I were working on this issue and this was something I had been working on for a couple years. But the administration was able to dictate the terms of the compromise because line item veto gave them all the cards, so long as they had one third of the House and the Senate. It is dangerous to allow a President to dictate the details of any provision in a tax or budget legislation he chooses to single out.

Another shortcoming in the line item veto process is the difficulty in amending provisions. Legislation to reinstate a tax or spending provision cancelled by the President in a slightly different form is subject to the pay-as-you go rules under current legislation. If Congress wanted to modify a tax or spending provision to address the President's objections to the original provision, as we tried to do with the farmer cooperative provision, we must pay for the provisions, even though Congress already paid for the proposal when it was initially enacted. This puts Congress at even more of a disadvantage in trying to restore proposals the President cancelled. Again, I am not for a moment suggesting we ought not allow the President to be involved in these decisions, but I think the process we are now operating under can be improved.

As I mentioned, I proposed an alternative proposal with Mr. Spratt and others that would have provided a much better process. It passed the House 3 years in a row, never made it to the Senate; a much better process that doesn't disrupt the balance of power. The President can identify items in tax and spending bills to strike

out, but would have to convince a majority of the House and the Senate.

Requiring the President to get a majority vote will force the administration to be more responsible and accountable to themselves and, admittedly, the first year out this administration made a few errors, but so did we.

Regardless of the Supreme Court's decision on the constitutionality of the line item veto, and I have always doubted the constitutionality of what we did, but we will see, I hope the administration will improve the process of identifying which items in tax and spending legislation should be struck out. Whether under the line item veto process or expedited recission authority, it certainly can be improved from the administration's standpoint. I think they ought to announce the criteria for evaluating items early in the process, monitor and evaluate line item veto candidates throughout the legislative process, and consult with committees of jurisdiction and affected Members before issuing the veto. Make decisions to veto items based on the item's merits, not on the political message sent out by the veto. All of this is good, constructive advice to the administration.

But in conclusion, what I hope we take a look at is the law itself and the legislation itself to see if we can't find again, which we three times have, agreement in this body that modified recission order made a lot more sense, passed the constitutional test and would accomplish most, if not all, of the desires of all of us that wish to see what we individually consider unnecessary spending, to at least have the light of sunshine shown upon it and an opportunity to have an honest debate on individual products.

Expedited recission authority is far preferable to the Line Item Veto Act in terms of protecting Congress's institutional authority. We should not allow the President to arbitrarily eliminate funding for worthwhile programs that have the support of the majority of Congress, with the support of just one third plus one of either the House or the Senate.

I hope the decision of the District Court to strike down the line item veto will cause my colleagues to take another look at the suggestions that Mr. Spratt earlier made and I make to you today and I appreciate the opportunity to be here.

[The statement of Mr. Stenholm follows:]

Statement by Congressman Charlie Stenholm
Problems with the Use of the Line Item Veto
House Rules Committee
October 22, 1997

Mr. Chairman, Mr. Frost, I appreciate the invitation to testify before this subcommittee on the line item veto. Having been on the receiving end of phone calls informing me of line item vetoes has given me a unique perspective about the problems with the process by which this Administration has used the line item veto. Given my unenviable experience with this process, I appreciate this opportunity to discuss the line item veto and to offer several recommendations about how the process by which line item veto decisions are made can be improved.

After years of stump speeches about the line item veto, the 104th Congress handed that authority to the President. When the President began using his pen to veto individual lines, or projects, within spending and tax bills, we learned that there are a number of problems when the theory of line item veto is put into practice.

My first-hand experience with the President's use of the line item veto on items I had supported reinforced the concerns I have consistently expressed about the line item veto. For years I was regularly asked why I wasn't an advocate of legislation granting the President line item veto authority. My answer was always quite simple: I was, and remain, willing to let the President strike out my favorite project or proposal, so long as I have an opportunity for a fair fight -- a chance to convince a majority of my colleagues that the President was wrong and the project is valid. Well, part of my rhetoric came true. The President did single out my favorite project or proposal -- twice. Unfortunately, someone wasn't listening to the second half of my rhetoric, because I had to convince two-thirds of my colleagues in the House and Senate that the President was wrong, while the President only had to convince one third of either the House or Senate that he was right. Given those odds, I was proud to succeed on at least one of the two fights.

I continue to believe that I could have convinced a majority of my colleagues that both of the items I advocated which were singled out under the line item veto were meritorious. Every Member who supported an item struck out by the President, deserves that chance. Unfortunately, under the Line Item Veto Act passed by Congress convincing a majority of my colleagues of the merits of a proposal is not sufficient to restore it.

The negotiations with the administration on the farmer cooperative provision that the President struck out in the first ever use of the line item veto underscored the tremendous amount of leverage the line item veto gives to the President. When the President announced his veto, he said that he wanted to work with those of us who sponsored the provision to enact a modified version of the proposal. However, in the negotiations that followed, it became clear that the line item veto gave the administration the ability to largely dictate the terms of the compromise.

We had to address every objection the administration raised, even if we believed their criticisms were unfounded or that the changes necessary to address the concerns would undercut our goals. The administration had the ability to walk away from the table and leave us with nothing so long as one-third of the House or Senate was willing to sustain the original veto. I believe it is very harmful to the integrity of the legislative process to allow any President to dictate to such detail the provisions in tax or budget legislation he chooses to single out.

The negotiations on the farmer cooperative tax provision pointed out another shortcoming in the line item veto process. Since the line item veto gives the President the authority to unilaterally change the law unless Congress disapproves of his action, the budget act assumes that any provision the President cancels under the line item veto act is repealed, and the savings from repealing that provision are not available to pay for any other tax or spending provisions. This has a major impact under our budget rules, which require offsets for any new tax provision.

Although the line item veto act makes an exception to pay as you go rules for disapproval bills, any legislation that attempts to reinstate a tax or

spending provision cancelled by the President in a slightly different form is subject to the pay as you go rules. In other words, if Congress wanted to modify a tax or spending provision to address the President's objections to the original provision -- as we tried to do with the farmer cooperative provision -- we must find offsetting tax increases or mandatory spending cuts to pay for the provisions, even though Congress already paid for the proposal when it was initially enacted. Although the farmer cooperative tax provision was paid for within the context of the balanced budget agreement, we had to find offsets in order to pass a modified version of this proposal that cost substantially less than the original proposal. This puts Congress at even more of a disadvantage in trying to restore proposals that the President cancelled.

I had proposed alternative legislation to the line item veto that would have provided a much better process -- and, in fact, my proposal passed the House three years in a row but never made it past the Senate. This alternative proposal would have provided a much better process for allowing the President to strike out unnecessary or low-priority items in tax or spending legislation without disrupting the Constitutional balance of power between Congress and the President.

This approach, known as the expedited rescission process or modified line item veto, was developed by Reps. Tom Carper, Dick Armey, Gerald Solomon, Tim Johnson, Bill Frenzel, Dan Quayle and others and was passed by the House in 1992, 1993 and 1994, but was never even brought to a vote in the Senate. I joined with Rep. John Spratt to offer expedited rescission legislation again in 1995, but the House rejected our proposal and enacted the Line Item Veto Act instead.

Allowing the President to strike out individual items in tax or spending legislation without giving supporters of the item the ability to respond through the regular legislative process gives the President far too much power to unilaterally make tax and spending decisions. That is the situation we face today with the Line Item Veto Act. Because of the tremendous difficulty in obtaining a two-thirds vote in both chambers to restore the project, the prospects for the items vetoed by the President are at the mercy of the

Administration's review and will not be restored unless the Administration admits to a mistake, even if the project has strong support in Congress.

Under expedited rescission authority, the President could identify items in tax and spending bills to strike out, but would have to convince a majority of the House and Senate to eliminate the item. If a majority of the House or Senate decided that the item was beneficial, it would survive.

Requiring the President to obtain majority support in order to eliminate individual items would force him to be much more responsible and accountable in the use of this authority. As we saw with the farmers' cooperative veto, the President does not need to make a substantive case justifying his veto because of the difficult hurdle Congress must leap to override the veto, regardless of the merits of the legislation. However, if the President were required to obtain majority support in Congress to eliminate an item, he would be forced to consider whether he could publicly defend and justify his decision to strike the item before he made the decision.

Now that we have had a few opportunities to witness the impact that granting the President virtual unilateral authority to eliminate line items with the support of just one-third of either the House or Senate has on the legislative process, Members may find it useful to review the history of expedited rescission legislation and reconsider our decision to enact line item veto with a two thirds override instead. I have attached brief history of expedited rescission legislation to my prepared remarks.

Regardless of the Supreme Court's decision on the Constitutionality of the line item veto, I hope the administration will review the experience with the line item veto authority last year to learn how the process of identifying which items in tax and spending legislation should be struck out -- whether under the line item veto process or expedited rescission authority -- can be improved. Although a certain amount of tension between the Administration and Members of Congress is inevitable when the President uses the line item veto, the process by which the Administration initially used the line item veto has caused many unnecessary problems. I will concede, however, that following the two initial line item veto experiences, the Administration

appeared to learn from some of the earlier stumbles and improved on its own processes. My following comments are intended to encourage them along those paths.

Announce criteria for evaluating items early in the process

Perhaps the greatest source of frustration for Members who had projects struck out by the line item veto is that no one knew the rules by which the projects would be judged until the decision had already been made. Announcing the criteria that were used to decide which items were vetoed at the same time the veto is issued creates the impression that the criteria are developed to justify previously made decisions. The only way to avoid that impression is to announce clear, objective criteria that will be used in evaluating projects well before the bill reaches the President's desk.--

The Appropriations Committee has instituted a rigorous evaluation process for reviewing proposals to add items to appropriations bills in order to set priorities within the discretionary caps. Members take these criteria set forth by the Appropriations Committee seriously and take great care to provide the Appropriations Committee with required information and documentation about their projects. It is therefore extremely frustrating for a Member who has played by the rules as he or she understood them to then have that project cancelled because of new rules added after the process has been completed.

The process established by the Appropriations Committee for evaluating projects has been successful in helping set priorities because Members know the requirements they must meet at the beginning of the process. In fact, many Members have declined to pursue projects that did not meet these criteria. The Administration can establish a much more constructive dialogue with Congress by announcing the criteria that it will use in evaluating projects under the line item veto process. Serving notice early in the process about the types of projects that will be subject to the line item veto will have the cleansing effect on the Appropriations process that the Administration claims it wants as a result of its use of the line item veto. If Members know the criteria that the Administration will use, they will be able to provide appropriate information justifying the project, if it is in fact justifiable, thereby helping to avoid

criticisms that the Administration is utilizing inaccurate or out-of-date information in applying the criteria to the project.

In addition, establishing the criteria for evaluating projects early in the process will provide time for reaction and input regarding the criteria by Members of Congress. For example, many questions were raised concerning the appropriateness of criteria employed in evaluating the military construction vetoes. Members, staff and others with considerable expertise and experience with military construction appropriations indicated that the criteria used by the Administration were not as simple to apply as the Administration believed or portrayed. While the Administration obviously has the right to use whatever criteria it chooses, providing an opportunity for Members to have input in the development of the criteria would enhance the sense of legitimacy and therefore benefit the Administration, as well as the overall process, in the long run.

Monitor and evaluate line item veto candidates throughout the legislative process

No one should have been surprised when the Administration discovered that it had used outdated or incorrect information in deciding to veto projects in the military construction bill. However, I believe it was unfair and misleading to blame the military services for these mistakes. Given the complicated chain of command and the volume of construction projects under consideration, it was unreasonable to expect the services to compile complete and up-to-date information regarding each potential project in the five day period after the President signed the military construction bill.

The only way to make careful, reasoned judgements about individual items is to begin to review these items as they move through the appropriations process so that the Office of Management and Budget has sufficient time to consult with the appropriate agencies and compile information about potential line item veto targets **before** they reach the President's desk. This will allow the President to use the five day period after signing an appropriations bill for a careful final review of the projects, rather than those five days initiating a

staff scramble to compile information hastily to justify vetoes. For example, if the Administration had carefully monitored potential line item veto targets in the military construction bill as it moved through the process, it would have known that the squadron operations facility for Dyess Air Force Base was included in the bills reported by both the House and Senate Appropriations Committee. If the Administration had identified this project as a candidate for the line item veto at either of these points in the process, there would have been time to contact Air Combat Command, the Civil Engineer and other officials and learn that a great deal of design work had already been completed and that construction could begin in fiscal year 1998.

Monitoring projects as they move through the process will also call additional attention to items added at the eleventh hour. Such items slipped into appropriations bills at the end of the process without legislative history are often the most questionable items and, thus, best candidates for veto.

Consult with Committees of jurisdiction and affected Members before issuing vetoes

Every item included in an appropriations bill has its own detailed background, history, purpose and rationale. It is impossible for the Administration to know this detailed background as well as the Members who have worked on the project for years and the Committees of jurisdiction with responsibility for evaluating these many projects. It is very unfair and discouraging for a Member who has devoted a great deal of time and energy to include an item in legislation to see that item cancelled without the President having a full understanding of the project. Many of the decisions to veto items have become controversial unnecessarily because the Administration did not completely understand the purpose or intent of the item or was not aware of the special circumstances surrounding the project. The only way that the Administration can make its decisions with certainty is to consult with the Members of Congress who are the most familiar with the project. While I realize that the Administration would prefer to avoid the inevitable workload that will result from being lobbied by supporters of items targeted for a veto,

giving Members the opportunity to defend their projects before the item is vetoed will help prevent embarrassments and problems after the veto has been issued.

Make decisions to veto items based on the items' merits, not on the political message sent by the veto

Most of the statements made by the President and Administration officials regarding items that have been vetoed have focused on the impact that the Administration believes the vetoes will have on the legislative process, the inherent message that is sent to Congress and the American public, and other political points. By contrast, very little effort was made in the two initial line item veto messages to outline the Administration's specific objections to the projects that justified the decision to cancel these items. By focusing on the political impact of the vetoes instead of the merits of the individual vetoes, the Administration has given credence to the argument that the line item veto is more about increasing Presidential power than eliminating unnecessary spending. Further, while I do not believe that the Administration intends to question the motives of Members supporting projects vetoed by the President, the rhetoric used to justify the vetoes in general without addressing the specifics has had that effect in many instances.

The bully pulpit gives the Administration a powerful tool to set the terms of discussion on line item vetoes. The Administration has an obligation to use the bully pulpit wisely in the line item veto. Applying broad-brush criticisms to all vetoed items and implying that these items could not survive on their own merits without identifying specific objections to which Members can respond is unfair to the Members affected by the veto and their constituents for whom the project can have a vital impact.

In short, the Administration must demonstrate greater respect for the views of Members of Congress who are acting on behalf of their constituents and the National good. They must also show a greater appreciation of the complexities in tax and spending legislation in order to restore credibility to the line item veto process. I believe that the controversy surrounding the

President's use of the line item veto would not be nearly as intense as it is today had the Administration followed these guidelines. It would have been much easier for me to accept the President's decision to veto the items I advocate if I have confidence that the decisions are based on the facts revealed by a careful process under these guidelines. A thorough process would result in many of the vetoes that the Administration has had problems defending -- including the items I supported -- not being vetoed in the first place. While it is too late to follow all of these guidelines for the current appropriations cycle, I hope that the Administration adopts these suggestions if the Line Item Veto Act is upheld and utilized again next year.

Conclusion

It was inevitable that the initial use of the line item veto would create some confusion and controversy. Some of the problems are inherent in the line item veto process we have enacted, and others could have been avoided if the Administration had been more careful in the exercise of this power. I hope that this experience can be used as a learning process at both ends of Pennsylvania Avenue to improve the process and avoid the problems that have plagued the line item veto process this year.

Even if the administration learns from last year's experiences and uses greater care with this authority, I continue to believe that this approach of expedited rescission authority is far preferable to the line item veto act in terms of protecting Congresses institutional authority. Although Congress was able to muster the two-thirds majority to override the President's use of the line item veto on the military construction bill, that may not be the case the next time. We should not allow the President to eliminate funding for worthwhile programs which have the support of a majority of Congress by simply garnering one-third plus one of either the House or the Senate. I hope that the decision of the District Court to strike down the line item veto will cause my colleagues to take another look at my suggestions.

Brief History of Expedited Rescission Legislation

99th Congress

September 19, 1985 Senator Quayle offered expedited rescission legislation requiring Congress to vote on resolutions approving Presidential rescissions by a majority vote within fifteen days as an amendment to the Omnibus Reconciliation Act of 1986. The amendment was ruled non-germane and defeated on a procedural motion of 34-62.

100th Congress

November 6, 1987 Rep. Dick Armey (R-TX) attempted to add an amendment to the FY88 Long-term Continuing Resolution granting the President enhanced rescission authority over funds included in the CR. Under the amendment, a simple majority of Congress could overturn the rescission. The effort was unsuccessful.

101st Congress

November 21, 1989 Reps. Tom Carper (D-DE), Dick Armey (R-TX, Tim Johnson (D-SD), Martin, Dan Glickman (D-KN), Bill Frenzel (R-MN) and others introduce H.R. 3800, a bi-partisan consensus expedited rescission bill.

102nd Congress

July 30, 1992 Rep. Gerry Solomon attempted to defeat the previous question on the Commerce, Justice and State Appropriations bill so that he could offer a motion to make in order an amendment providing expedited rescission authority. The effort was unsuccessful.

October 3, 1992 -- The House passed H.R. 2164, expedited rescission legislation introduced by Rep. Tom Carper, by a vote of 312-197. The Senate did not act on this legislation before the 102nd Congress adjourned.

103rd Congress

April 28, 1993 The House passed H.R. 1578, the Expedited Rescissions Act of 1993 introduced by Rep. John Spratt (D-SC) and Rep. Charles Stenholm (D-TX) by a vote of 258-157. The Senate took no action on this legislation.

July 14, 1994 The House passed H.R. 4600, the Expedited Rescissions Act of 1994, as amended by the Stenholm-Penny-Kasich substitute, by a vote of 342-69. The Senate did not act on this legislation before the 103rd Congress adjourned.

104th Congress

February 3, 1995 The House rejected an expedited rescission amendment offered by Reps. Bob Wise (D-WV) and Charles Stenholm (D-TX) as a substitute to H.R. 2, the Line Item Veto Act of 1995, by a vote of 167-246.

Selected Quotes on Expedited Rescission

Senator Dan Quayle, in an opinion editorial in the Wall Street Journal on January 29, 1985 regarding expedited rescission legislation that he had introduced:

> I have introduced an initiative (to) allow a rescission of spending authority to be enacted should the President and a majority of both houses agree to it. Without making any changes in the constitutional balance of powers, my proposal would guarantee congressional action on presidential proposals to reduce or eliminate spending...(it is) a common sense tool that the president and Congress should have at their disposal to restrain unneccessary and excessive federal spending.

Rep. Dick Armey, in a Dear Colleague letter dated November 2, 1987 asking for support of his amendment that would allow the President to rescind items in the Continuing Resolution, subject to majority override:

> Enhanced rescission legislation will involve the Administration and the Congress in a meaningful deficit reduction process in a manner that ensures both institution's prerogatives are protected.

Rep. Gerald Solomon, during a debate on the House floor on July 30, 1992, in support of his effort to make in order an amendment to grant the President expedited rescission authority:

> If we defeat the previous question, I will offer the Carper line-item rescission amendment that simply requires Congress to vote up or down on the President's request not to spend the money. This requires only a simple majority vote....For those of you who really believe in the line-item veto, we have reached a tremendous compromise here that you can vote for. It should be something that this House can support overwhelmingly.

Rep. Harris Fawell, during debate on the House floor on H.R. 2164, expedited rescission legislation passed by the House:

> This bill is at least the first step of a 1,000 mile journey toward hopefully someday being able to balance the federal budget.

Statement of Administration Policy issued by the Office of Management and Budget on October 2, 1992 regarding H.R. 2164:

> Enactment of H.R. 2164 would temporarily increase congressional accountability for "pork barrel" spending in the appropriations process.

Mr. GOSS. Thank you very much. Either way we are going to be taking another look. I agree the enhanced and expedited recission is an attractive idea, one that Congress has been considering a great deal.

One of the things that is the difference, of course, is the trade-off we made in terms of less spending, and that is the shift of power question that has come in. But the thing that you have talked about, which interests me very much, is the fact that you had experience where at least the White House was willing to sit down and talk on a bipartisan basis on a matter you were interested in. I think as long as that is happening, which is the proper governance, I think the proper use of power, that there is hope. I agree there is potential for abuse. If there is abuse, what is the remedy for it?

Mr. STENHOLM. Well, I would rather not use the word abuse. You know, my point, even where we had a bipartisan effort to work out something in which we had folks on both sides of the aisle agreeing—

Mr. GOSS. Right.

Mr. STENHOLM. —that the President had erred in judgment, when you give a President one third plus one, his negotiating authority with you has been enhanced tremendously.

Mr. GOSS. I agree with that.

Mr. STENHOLM. And I have always asked my constituency who felt very strongly about this over the years—I have opposed line item veto in town hall meetings, and I always used the example I have given to you today, and then I look you straight in the eye and I say, "Does it make any difference who is in the White House?" And if someone says it doesn't make a difference whether it is liberal Democrat or conservative Republican, I shake their hand and say, "You have got an honest position." But if you flicker for a moment in who you wish to give that power to, I got you.

Mr. GOSS. I agree with you. The view I take on it is that the accountability works on the President as well.

Mr. STENHOLM. True.

Mr. GOSS. I think that may be the saving grace. I still believe in the ballot box and I hope it works. I know some people's memories don't go 4 years, but with proper reminders, maybe.

Mr. HASTINGS. I don't have any questions.

Mr. GOSS. Thank you, Mr. Stenholm. I appreciate you coming this morning.

At this time we have Mark Neumann, the distinguished gentleman from Wisconsin, who has also had a few things to say on the subject of this general matter over the years and we appreciate you being here. We have your statement which we will accept without objection and we welcome your comments.

STATEMENT OF THE HON. MARK W. NEUMANN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN

Mr. NEUMANN. Thank you.

I come from a State where line item veto has been used a lot. As a matter of fact, our Governor has used it perhaps more than any other Governor in the history of this country. And I guess com-

ing from that background, we have seen the benefit of it because with Tommy Thompson's leadership using the line item veto, we have seen the opportunity to lower taxes on our working families in Wisconsin without raising taxes in other places to offset for the tax reductions.

Mr. GOSS. May I interject and just ask, does Wisconsin have a mandatory balanced budget provision?

Mr. NEUMANN. Yes, we do, and I certainly support enacting that provision here in Washington.

So as we look at the potential impact of the court ruling, I have a couple of ideas as we consider extending the Line Item Veto. First, we should expand the power and encourage the President to use it much more than he has in the past. And in expanding the power of it, I think we should write it permanently into law so that it does not have a sunset provision. Secondly the Line Item Veto should be available to use anytime, whether it be deficit or surplus and whichever party is in power, the President can look at any bill, and where he sees inappropriate spending on behalf of the American people, he can veto it out.

The other thing I would like to encourage the committee to at least think about is the possibility of the courts ruling against our current law. We should have already drafted something as a backup, so we are prepared to move quickly forward in the event the courts would rule down what we have now. So we would really require some legal expert following what the courts are saying and figuring out a way to craft it which avoids any constitutional problems the courts may have with the way it is currently written. But I think we should do that now and not later, and I think we should be ready to move on this within weeks after the court decision comes down in the event it goes against us.

Mr. GOSS. Thank you.

Mr. NEUMANN. That, plus what I have in my statement.

[The statement of Mr. Neumann follows:]

Statement of
Congressman Mark W. Neumann
House Committee on Rules
Subcommittee on Legislative and Budget Process
"The Line Item Veto After One Year"
March 12, 1998

Mr. Chairman and members of the committee,

Thank you for giving me the opportunity today to share my views on the Line Item Veto Act which was signed into law on April 9, 1996. As an original sponsor of this bill, I feel it is a very important tool which has not yet been used to its full potential.

The success of the line item veto has been documented in 43 states where governors have some form of this veto power. In the state of Wisconsin, Governor Tommy Thompson has used his line item veto authority to save Wisconsin taxpayers millions of dollars. He has used this taxpayer-friendly tool consistently and fairly.

The American people understand how the line item veto can save them billions of dollars in unnecessary spending. Every week they hear stories about how the federal government is spending their hard-earned money on some ridiculous project in the middle of nowhere. To them it must seem like Congress' only mission is to spend taxpayers' money on pork barrel projects.

Before enactment of the Line Item Veto Act, the President had one method to stop wasteful spending -- veto an entire appropriations bill. This is a drastic step to take to cut wasteful spending. The line item veto gives the President a chance to carefully eliminate projects which are not in the national interest while signing into law vital appropriations measures.

The line item veto adds another measure of accountability to both the President and Congress when it comes to spending taxpayer dollars. The line item veto allows the President to pull controversial items out of large appropriations bills and allows Congress to have an up or down vote on them. Neither the President nor Congress have excuses for allowing wasteful spending to be signed into law.

Wisconsinites expect their federal tax dollars to be used to fund projects and programs which are in the best interest of the nation as a whole -- not local programs in another state. State taxes should be used to cover the cost of state and local projects. Giving the President permission to eliminate spending which is not in the national interest is the best way to control pork barrel spending.

The President has made limited use of the line item veto during its first year. As expected, his decisions have created controversy and started the process of reviewing whether this power is Constitutional.

Many of the concerns surrounding the line item veto arise from the President's veto of 38 projects funded in the Military Construction Appropriations Bill (H.R. 2016) for Fiscal Year 1998. These projects were vetoed on October 6, 1997, and caused an immediate uproar.

Many questions were raised regarding the methods the President used to determine which projects to veto. Some pointed out that 13 vetoed projects affected Congressional districts represented by Democrats while 25 vetoed projects affected Congressional districts represented by Republicans. Others claimed the criteria used to evaluate the merits of a project were faulty or the decision to veto a project was based on misinformation. The wailing went on for months.

When the dust settled, the Line Item Veto Act performed as promised. Congress passed a resolution overturning the line item vetoes. The President vetoed the resolution, and Congress overrode the President's veto. I did not support these efforts, but they were successful. The process of overturning line item vetoes works.

I had hoped the President would be more diligent in his efforts to find and eliminate the numerous projects in last year's appropriations bills which deserved line item vetoes. Unfortunately, he only managed to highlight a few dollars of unnecessary spending. The American people should be disappointed that millions of their hard-earned dollars were spent on wasteful programs when the President had the power to stop it.

I am positive that the line item veto is an effective tool for reducing wasteful government spending, and I am hopeful that taxpayers will benefit from billions of dollars in line item vetoes in future appropriations and reconciliation bills.

Mr. GOSS. I appreciate it. Let me ask two questions if I might. One has to do with what you think about the enhanced expedited recission process that Mr. Spratt and Mr. Stenholm discussed?

Mr. NEUMANN. You mean going back to requiring a simple majority to override a veto as opposed to a two-thirds majority?

Mr. GOSS. Yes.

Mr. NEUMANN. Well, you know me well enough to know I come down on the side of less government and less spending, and I think that that is a move toward making vetoes easier to override—leading to more government and more spending. Therefore I would be opposed to that.

I think the line item veto is much like any other veto by a President. With any other veto we accept that it takes two-thirds to override the President's veto, whether it be partial birth abortion, an appropriations bill, whatever it might be, it takes us two-thirds to override a presidential veto. And I guess I look at the line item veto as no different than any other veto.

I have also heard all this discussion about changing power here. I don't think a line item veto is a lot different than any other veto we might work with in any other situation. We still have the ability to override it. As Mr. Stenholm said just before me, we have the ability to sit down with the President and work out an agreement of some sort and repass the vetoed item in the next Congress. There are a lot of opportunities in the event it is used inappropriately to either override it, as has happened already, or to work out some sort of solution in the next Congress. So I am opposed to reducing the override to a simple majority.

Mr. GOSS. Much of the testimony has gone just to the discretionary. Obviously that gets more attention than the entitlement and mandatory spending and the tax benefit piece, but, actually, this is much broader, of course, than just the discretionary. And the issue of the two thirds, the court has to determine that. But if in fact there is a concern on that by the court, do you have a different approach to that question where you still maintain the bias of less spending, without the constitutional question?

Mr. NEUMANN. No. I mean, maybe somebody smarter than me can figure out that answer, but I would certainly encourage us to quickly and immediately reenact the line item veto even if it is with the simple majority override. So, in other words, if the Court says this is a change of power not envisioned by our Founding Fathers in the Constitution, and therefore it is unconstitutional, I would certainly think at that point we would want to propose a version like Mr. Stenholm was suggesting which requires a simple majority to override the veto. I think that is much better than not having the line item veto at all, and it still puts a degree of accountability on the President that we have not had in the past.

Mr. GOSS. Do you think based on the process, which is what our hearings really are, we are looking back over the year and saying has this thing worked—we have had a lot of testimony there were some problems and it is a learning experience and so forth—seeing if we should make minor adjustments, whether 5 days is enough for the President if he gets a bunch of appropriations bills at the same time? I mean, is that really fair and that kind of question.

Do you have any comment about the process itself—I know that you have been following it very closely—that we should adjust or in any way deal with the question of accountability, because I tend to believe accountability goes not only to Congress but to the President. It is a shame-on-you, shame-on-me deal if two people let the pork go through.

Mr. NEUMANN. I have a smile on my face because if you let Mark Neumann design the process, we might put in requirements that the President vetoes half of the bill or something of that nature, and that would truly reduce the size and scope of this government. But I realize that is not a practical solution to this sort of thing.

So, short of doing something like that, which I would not consider a reasonable approach, I think the line item veto does work. I think with the President we have right now, it was grossly underused this year. But with a different President—and I would point to someone like Tommy Thompson—in the White House, I think you would see a dramatic change in the use of the line item veto, and I think a different President might use it much more to the benefit of the American taxpayer.

And that is not even as much of a criticism against President Clinton as it is a vision about the role of government is our country, and I realize we have different visions and I respect that.

So I would say the line item veto does work, looking at the process. I would like to have seen the President use it much more than he did, but anything we can do to enhance the President's ability to line out or to veto pork barrel spending, I think benefits the country as a whole.

Mr. GOSS. Doc.

Mr. HASTINGS. Real briefly, in Wisconsin, does the Governor have line item veto authority on other items, other than appropriation bills, do you know?

Mr. NEUMANN. I believe he does. I am not an expert on what he does. All I know is we keep reading about what he has vetoed most recently, and the vast majority of his vetoes in Wisconsin are upheld.

Mr. HASTINGS. In our State, our Governor—and what we bring here is what we are used to in the minor leagues, so to speak—but our Governor has a great deal of authority. I mean, I tend to agree with you, and I served in the legislature under a Republican Governor and a Democratic Governor. If you had criticism of the Governor not using it or exercising it or using it in the wrong way or something, you still had the ability to override it. So I was just wondering.

Mr. NEUMANN. They use it a lot in Wisconsin, and all I can say is it works well out there and there is no reason we shouldn't have it here.

Mr. GOSS. Thank you, Mr. Neumann, very much. We appreciate your continuing interest and viable input.

Mr. NEUMANN. Thank you.

Mr. GOSS. We now call the panel of the dynamic Midwest duo of Mr. Upton from Michigan and Mr. Roemer from Indiana.

Mr. UPTON. And we will take Florida State on anytime.

Mr. GOSS. We welcome that. There is no adversarial relationship whatsoever. We welcome most of your constituents to Florida at some point or another during this winter season.

Mr. UPTON. We are playing in St. Petersburg.

Mr. ROEMER. We welcome your constituents up to Indiana and Michigan at any time as well, too. The weather is not quite as accommodating right now but you are welcome.

Mr. UPTON. We don't have that El Nino in the Midwest.

Mr. GOSS. We feel there is an excellent communication, a symbiosis between our States and we are very happy about it.

Mr. HASTINGS. I have an 11:00 o'clock so I am now going to leave, so when I get up and leave, don't get ticked off or anything.

Mr. GOSS. I have a statement from Mr. Upton and I think I have one from Mr. Roemer also, which will be accepted for the record, without objection, and we welcome your panel presentation.

STATEMENT OF THE HON. TIM ROEMER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

Mr. ROEMER. I am delighted to be before the distinguished Rules Committee once again and honored to be with my good friend from Michigan, Fred Upton, who we have written this legislation with. I am going to be as brief as the bill before you; it is less than 50 words. I won't be that brief but hopefully, with my statement entered into the record, I am going to be very succinct.

Is the Constitution—is the line item veto constitutional? The District Court struck it down. The Supreme Court is going to rule by July 1st. I am not a constitutional expert. I hope it will be ruled constitutional, but we will see.

Did the President use the line item veto appropriately? We have seen vetoes worth $569 million over 5 years. That is a lot of money. I think the President worked with Congress fairly and appropriately, even admitted mistakes at the White House on the military construction bill. I think it is a pretty good working relationship, and I think that there probably were some improvements in the bill.

Thirdly, what can be improved and what are Mr. Upton and I suggesting for improvements in our legislation? Simply put, we are saying if the line item veto works, and we think it does work, it should be applied not only in times when you are running a deficit, but in times when the balanced budget has a surplus, or when the budget is balanced.

If there is wasteful spending when you have a deficit, certainly you have not cured the propensity on the part of Members of Congress to put pork in bills when we have surplus years or when we are balanced, and the President should be a partner in working with Congress to weed out that wasteful spending.

And so I have voted for the line item veto. I think it has been applied fairly. I think it should be applied in the future, whether we have a deficit or a surplus or whether we are balanced.

Yesterday I believe June O'Neill testified before this committee she thought the law was unclear on whether or not the veto authority should apply in times when we had surplus or balance.

This Upton-Roemer bill clarifies that point, and this Upton-Roemer bill does it simply and with clarity. We have 45 cosponsors, in-

cluding Mr. Solomon, your distinguished chairman. We hope the entire Rules Committee will cosponsor this legislation, and we hopefully look forward to the day when the Committee may modify and improve the line item veto, but certainly one of those improvements would entail applying this line item veto fairly and appropriately in balanced and unbalanced times.

Mr. GOSS. Thank you.

[The statement of Mr. Roemer follows:]

Statement of Rep. Tim Roemer before the Committee on Rules, March 12, 1998

Mr. Chairman, I want to thank this panel for the opportunity you are providing for bipartisan testimony from me and our colleague, and my friend, Fred Upton, here today.

Mr. Chairman, since I have been in Congress, I have worked in a bipartisan manner to cut wasteful spending. It takes a great deal of work to determine which programs are intelligent investment in our nation's future, and which projects are spending out of control. We have had many successes, like the balanced budget, and have had some near misses, like the wasteful space station that just this year is running another four billion dollars over budget.

One of our successes in reigning in wasteful spending was the passage of the line item veto into law. The President has exercised restraint in the use of this veto, and even the one override was done with the support of the White House. It is an important tool, and I believe Congress was justified in giving the President a leading role in discretion over spending.

Although the U.S. District Court struck down the law recently, the Supreme Court is apparently going to make a final decision by July of this year. I think it is important that the Administration, and the leadership in Congress, use available means to fight for the future of the line item veto.

But we also need to do more. Fred Upton and I have introduce legislation that would make the line item veto a full-time tool for the President to use against wasteful spending. Under current law, the line item veto can only be used when there is an annual deficit. But wasteful spending occurs, less than it used to, certainly, but it still occurs. Lack of a deficit does not necessarily mean lack of wasteful spending.

Our bill, HR 2424, would keep the line item veto alive when the budget is balanced and when there is a surplus. We believe that this is an important addition to the line item veto concept, and we hope that the panel and the Congress will see fit to adopt this idea in future debates and legislation dealing with line item veto issues. The bill has 45 cosponsors, including Mr. Solomon, an original cosponsor. The supporters of this bill represent the entire spectrum of political views in this Congress.

On the merits, we believe that the line item veto should pass Constitutional muster. The President has a long-standing authority to refuse to spend appropriated sums. The line item veto puts the President on record in this process, bringing sunshine to the practice. Shared judgement on spending the taxpayers dollars makes sense.

We hope that you will agree that our proposal makes sense, too. Thank you.

Mr. GOSS. Mr. Upton.

STATEMENT OF THE HON. FRED UPTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. UPTON. Thank you, Mr. Chairman. I will also insert my statement in the record. I note from Michigan's perspective, Jim Blanchard, a Democratic Governor, as well as John Engler, a Republican Governor, have used this. No one has criticized their use of it. It has been bipartisan, as Doc indicated in his State. We noticed there was a problem with this. We want the line item veto to continue. We both support the Supreme Court reinstating this provision for sure, but when it was drafted as part of the Contract With America, people thought we would have $200 billion deficits for as long as the eye could see. And even last year, CBO and OMB were off by about $100 billion. And now that we are in this era of surpluses and we can begin to reduce the debt, this is a tool that really can be used and we do not want to see it go away.

And that is why it is bipartisan. We have people on both sides of the aisle, from the date Tim and I introduced it, but you look at the list of cosponsors and again you have folks on both sides, with a lot of folks in the middle. And we would like—Dave Camp has indicated his willingness to move this through the Corrections Day, and that is why we are here today and your support is critical in getting it done.

[The statement of Mr. Upton follows:]

Statement of Congressman Fred Upton
Subcommittee on Legislative and Budget Process
"The Line-Item Veto After One Year"
March 12, 1998

Mr. Chairman,

Thank you for calling today's hearing on an important budgetary law, the line-item veto. I understand that you had a number of distinguished participants at yesterday's hearing such as my good friend, former Congressman Bill Clinger. I appreciate this opportunity to offer my thoughts before you today.

I was pleased to support the line-item veto when it passed the House in 1996. Forty-three Governors, including Michigan's John Engler, have used it at the state level to much success and I believe it is appropriate for the President to have this authority.

All of us are heartened by the continued expansion of the economy and recent estimates that the federal budget is now balanced and a surplus will exist for this fiscal year. The 1997 Balanced Budget Act and the continued strength of our economy has financial experts predicting that we will see surpluses as far as the eye can see. But we shouldn't rest on our laurels.

Last summer, I discovered that a little noticed provision in the present line item veto law allows the President to use this veto <u>only</u> when there is a federal budget <u>deficit</u>. We are now encountering budget surpluses and fiscal stability but we must remain vigilant against wasteful spending. The line-item veto is an important tool as we fight to keep our budget in balance.

My good friend, Tim Roemer, and I have introduced legislation which will allow the President to use the line-item veto even if the federal budget has a surplus. The bill has been cosponsored by 45 Members. In light of our $5.5 trillion debt, we believe that the line-item veto should remain in effect. All of the other provisions of the present law will remain intact. The Corrections Committee has endorsed the bill and has recommended that it be considered by the Budget Committee and placed on the Corrections Calendar.

I believe that the continued use of the line-item veto authority, regardless of whether or not we have a budget deficit or surplus, will help ensure that taxpayers are getting the best return on their tax dollars. I look forward to answering your questions.

Mr. GOSS. I appreciate your testimony, and I receive this explanation as a very strong improvement, if in fact there is a question that could at least be clarified; and you are right, there has been some testimony to that point.

My view is that the purpose of the bill in the record is pretty clear, that it was designed to cut out wasteful spending or provide a disincentive or accountability at the very least. But in that context, I think your amendment is exactly right. Wasteful spending is the issue, regardless of whether we are in surplus, deficit, or balanced. I appreciate you bringing this forward. I think it is extremely important legislation and I think it focuses on a matter at a time this needs to be focused on.

Mr. UPTON. Should we put you down as a cosponsor?

Mr. GOSS. As far as I am concerned, you can.

Mr. ROEMER. You looked for staff approval, too.

Mr. GOSS. Is there any reason this is a bill not to be a cosponsor? I would be proud to be associated with you.

Mr. ROEMER. Mr. Chairman, can I just kind of comment on your statement?

Mr. GOSS. Please.

Mr. ROEMER. Since I have been here in 1991, certainly one of the arguments we have had when we have taken an amendment down to the House floor to try to get approval for cutting out wasteful spending is that we are running a deficit. We will not have that argument in the future, should we have a balanced or a surplus. And I think that sometimes is a compelling argument with Members of Congress, that we are running a deficit, we need to balance, and some of this money could be used to put toward the Treasury to balance a budget. However, when we run a surplus or we are on balance and Members of Congress may not be as concerned about the deficit, certainly they should be concerned about wasteful spending. And the nature of Members of Congress sometimes, the propensity or proclivity to put things in there that are not necessarily in the best interest of the country, are still going to be there.

Therefore, the line item veto application in times of surplus or balance becomes even more important in many ways, and you can argue this modification that Mr. Upton and I have recommended becomes even more important as we run into times of balance or surplus.

Mr. GOSS. I would certainly argue it that way. I agree with you totally, and I agree the benefit of clearing up any ambiguity is important if that becomes a matter of concern. I don't think it is of that much concern, but if it is, this is helpful in that area. But I agree, only in Washington would a balanced budget be a green light to go waste money. Wasting money is something maybe you can talk about in Washington, but when you go home and talk to the folks, it is not Washington's money, it is their money, and we are supposed to return that part that we do not use wisely, or reduce taxes so they do not have to send it up here in the first place, would be my answer. That is probably the answer for you two as well.

Mr. Hastings.

Mr. HASTINGS. Just out of curiosity, we heard testimony this morning from some distinguished Members that have a real problem with the whole concept of line item veto because it shifts more power to the President. What are your remarks on that?

Mr. UPTON. Well, for me, it works in 43 States; and, you know, we have seen it now in operation for a year. But you know, this is something—I see this as a balanced power. We have seen this House, as well as the Senate, override a veto on this issue with the recent military construction appropriation spending bill. To me it is, you know, both sides have a chance to weigh in. If it works, we get stuff out, and all of us know countless examples of things stuck in the bill.

I only wish this could apply to the national sea grant program that has Lake Champlain as one of our Great Lakes. And I introduced a bill to take that out, and I am thinking about another bill that instead of taking the 7-word sentence out, replace the word "Great" with "dinky" for Lake Champlain, so this is a useful tool and it ought to be in place and we have seen it work everywhere.

Mr. ROEMER. Doc, I think one of the answers to your question, too, is the President has been exceedingly careful in the use and utilization of the line item veto not only as applies to a particular bill, whether it is a military construction bill or defense bill, in terms of fairly applying that line item veto to the overall bill and trying to pick out items that may be, you know, abusive or wasteful or unneeded, that may be put in by a powerful person on the committee or to serve a need for the defense of the country, but he is also forced to look, even outside the context of the bill, when Members start to threaten, even apart from an override, that he could endanger future votes by his abuse of the line item veto.

So there continues to be, even outside the context of that line item veto within a particular appropriations bill, a balance of power and negotiation that continues to go on. And I think that is why you saw the President probably use this sparingly, and I think future Presidents will continue to use it intelligently and wisely and sparingly in the future, too, whether they are Republican or Democrat.

There is a continual need for a balance of power, for a combination, for negotiation on future issues outside the context of that bill, and I think Presidents are very sensitive to that, and they need to be.

Whether or not you get into the two thirds versus 50 majority argument, I am not a constitutional lawyer, if it came down to my personal opinion, if that was the objection of the court, I would certainly abide by it 50 percent to keep the line item veto.

Mr. GOSS. Thank you very much. I appreciate your testimony.

I would like to call Governor Castle. We have just a few minutes before a vote. We would be very happy to receive without objection, for the record, your full written statement and any observations you would like to make. And if you would like to come back after the recess you are welcome to do that as well.

STATEMENT OF THE HON. MICHAEL N. CASTLE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF DELAWARE

Mr. CASTLE. I appreciate the opportunity to come back anytime, but I have other obligations and I know you have other people to testify as well, so I would like to spend just a minute or two with you. I appreciate you accepting my full statement for the record and I will be relatively brief.

I favor the line item veto, I totally favor the line item veto. I have had the opportunities to use it as a Governor and I want to read a couple paragraphs here that I think try to capture the philosophy of why I go into this. All my efforts in terms of being half recission is a way of trying to make sure the Supreme Court would validate what we are doing. Although I have taken strong positions on it, I am not one of those who gets too worried about how we are doing a line item veto, because my belief is we should indeed be bringing the executive branch into the budgeting process.

Some Members are concerned that the line item veto would greatly increase Presidential power over the Congress. I am not concerned and have always believed that the administrative branch is and always has been a part of the budget process, and that it shares directly in what I view as a joint responsibility for forwarding a viable and responsible budget. By retaining the President's use of this authority we can actually help ensure and preserve the President's responsibility to remain active and engaged and also have him share in the fault of flawed budget outcomes. More than anything else I can say, this captures my beliefs on why this is important.

The President has the responsibility to carry out a lot of the budgeting process, either in discretionary directly or entitlements by administering them. The President presents a budget to us, gives a State of the Union speech, talks about the programs. The President should be involved. If the President doesn't do it right, the President needs to have the same responsibility as Congress. And I feel very, very strongly about that, and that is why I have felt so strongly about the line item veto.

I just saw the Washington Post today, that the line item veto will add up to $569 million in savings over 5 years. Not quite as insignificant a beginning to the line item veto process as I might have thought, not having access to the totals before, considering he has not used it in a particularly aggressive sense. And I would just say for that President who someday will come along and become very aggressive and even try to dictate the policies of Congress by the use of the line item veto, I think that the politics of that will bear out. If the Congress doesn't like it, be it a Congress of his or her party or another party, the Congress can speak to that, the public can make judgment of it. But I think for the time being, it has been an improvement to our process.

I don't want to credit it with balancing the budget. I don't want to go that far, but the bottom line is that the Congress has done a lot of good around here in the last 5 years that led us to the point we are supposed to have an $8 billion budget surplus this year. Though it is less than one half of 1 percent, and therefore very pre-

carious, it is nonetheless there, and I think in part procedural measures such as this have contributed to this.

When one takes the time to study carefully my written statement, I can tell you that it will be strongly, 100 percent, on the side of the line item veto. I think it is in the best interest of the country, not the Congress and White House, not Republicans and Democrats, but for the United States of America. For that reason, every time I have had a chance to appear before this committee to speak about the line item veto, I have done so with zeal and with the concept of let's get a line item veto on the record. And I thank you for the opportunity to be here.

[The statement of Mr. Castle follows:]

OVERSIGHT HEARING BEFORE THE RULES COMMITTEE SUBCOMMITTEE ON LEGISLATIVE AND BUDGET PROCESS

"THE LINE-ITEM VETO AFTER ONE YEAR"

REPRESENTATIVE MICHAEL N. CASTLE
MARCH 12, 1998

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE, THANK YOU FOR THIS OPPORTUNITY TO APPEAR BEFORE YOU TO DISCUSS THE USE OF THE LINE-ITEM VETO AUTHORITY, A SUBJECT WE ALL KNOW IS A VERY TIMELY AND IMPORTANT ISSUE.

THIS IS THE THIRD TIME I HAVE APPEARED BEFORE YOUR COMMITTEE TO DISCUSS THE LINE-ITEM VETO – THE FIRST TIME IN 1993 WHEN MANY MEMBERS WANTED A STRONGER ALTERNATIVE TO ENHANCED RECISSION LEGISLATION, AND IN 1994, IN SUPPORT OF THE MICHAEL-SOLOMON AMENDMENT TO H.R. 4600, WHICH HELPED PROVIDE THE PRESIDENT TRUE LEGISLATIVE LINE-ITEM VETO AUTHORITY THAT WAS EVENTUALLY SIGNED IN TO LAW.

I BELIEVE THAT THE LINE-ITEM VETO AUTHORITY IS A VERY LEGITIMATE AND DESIRABLE TOOL THAT IF USED PROPERLY CAN HELP REDUCE UNNEEDED GOVERNMENT SPENDING AND ASSIST IN REDUCING THE PROPENSITY TO LOAD CERTAIN APPROPRIATIONS BILLS WITH UNNEEDED SPENDING. I WILL BE THE FIRST TO ADMIT THAT THE LINE-ITEM VETO IS NOT A MAGIC SOLUTION TO DEFICITS OR DEBT. RATHER, IT IS BEST USED

TO DELETE EXCESSIVE OR IMPROPER APPROPRIATIONS, AND TO HELP SET A TONE OR DIRECTION UNDER WHICH THE BUDGET PROCESS OPERATES AND PROCEEDS.

WHEN I FIRST TESTIFIED HERE 5 YEARS AGO, THE BUDGET DEFICIT APPROACHED $200 BILLION AND WAS RISING. THOUGH WE EXPECT A VERY SMALL BUDGET SURPLUS THIS YEAR, HAVING THE CONGRESS BE SUBJECT TO THE LINE-ITEM VETO'S AUTHORITY IS STILL A POWERFUL TOOL THAT CAN HELP GUIDE AND KEEP THE BUDGET PROCESS ON TRACK.

WE KNOW THAT THE LAW, PASSED TWO YEARS AGO, PERMITS THE PRESIDENT TO "CANCEL" NEW ENTITLEMENT PROGRAMS AND SPECIAL INTEREST TAX BREAKS THAT MEET CERTAIN CRITERIA. IT ALSO GIVES HIM NEW POWER TO RESCIND INDIVIDUAL ITEMS IN APPROPRIATIONS BILLS, AND WE KNOW THAT THE PRESIDENT HAS BEEN SOMEWHAT ACTIVE IN USING THAT POWER ON FISCAL YEAR 1998 SPENDING BILLS. PRESIDENTIAL ACTIONS TAKE EFFECT AUTOMATICALLY UNLESS CONGRESS PASSES A BILL TO OVERTURN THEM – SOMETHING I PUSHED FOR WHEN I TESTIFIED BEFORE YOU ON H.R. 4600, THE EXPEDITED RESCISSION ACT. THE PRESIDENT CAN VETO THAT BILL, AND CONGRESS WOULD HAVE TO OVERRIDE THE VETO WITH THE NORMAL TWO-THIRDS VOTE OF BOTH HOUSES.

MR. CHAIRMAN, SOME MEMBERS ARE CONCERNED THAT THE LINE-ITEM VETO WOULD GREATLY INCREASE PRESIDENTIAL POWER OVER THE CONGRESS. I AM NOT CONCERNED, AND HAVE ALWAYS BELIEVED THAT THE ADMINISTRATIVE BRANCH IS AND HAS ALWAYS BEEN A PART OF THE BUDGET PROCESS, AND THAT IT SHARES DIRECTLY IN WHAT I VIEW AS A JOINT RESPONSIBILITY FOR FORWARDING A VIABLE AND RESPONSIBLE BUDGET. BY RETAINING THE PRESIDENT'S USE OF THIS AUTHORITY, WE CAN ACTUALLY HELP ENSURE AND PRESERVE THE PRESIDENT'S RESPONSIBILITY TO REMAIN ACTIVE AND ENGAGED, AND ALSO HAVE HIM SHARE IN THE FAULT OF FLAWED BUDGET OUTCOMES.

SOME HAVE ARGUED -- AND THEY ARE TO A DEGREE CORRECT -- THAT OUR CURRENT PRESIDENT HAS FALTERED IN THE BEST APPLICATION OF HIS AUTHORITY IN USING THE LINE-ITEM VETO. MY VIEW IS THAT THE PRESIDENT HAS NOT SO MUCH ABUSED THE LINE-ITEM VETO AS HE HAS MISAPPLIED IT IN SOME CASES. BUT IN DOING SO, I DON'T BELIEVE HE HAS ALIENATED THE CONGRESS OR THE PUBLIC, OR IN THE LONGER TERM, MADE A STRONGER CASE FOR ITS OVERTURN.

AS GOVERNOR OF DELAWARE FOR EIGHT YEARS, I HAD THE LINE-ITEM VETO AUTHORITY, AND 43 STATES GIVE THEIR GOVERNOR THE SAME AUTHORITY. THOUGH I USED IT RARELY, DURING THAT TIME IT WAS EFFECTIVE IN MAKING THE BUDGET AND SPENDING PROCESS MORE RESPONSIBLE. MY EXPERIENCE IS THAT ITS PRESENCE HELPS ENCOURAGE

THE EXECUTIVE AND THE LEGISLATURE TO NEGOTIATE REASONABLE BILLS THAT DO NOT FUND PORK-BARREL PROJECTS.

AS GOVERNOR OF ARKANSAS, PRESIDENT CLINTON UTILIZED THE LINE-ITEM VETO AUTHORITY EIGHT TIMES. AS PRESIDENT, HE HAS USED THE AUTHORITY ELEVEN TIMES, AFFECTING NINE APPROPRIATIONS LAWS AND CANCELING A TOTAL OF 82 ITEMS. IN FACT, THE PRESIDENT'S SUCCESSFUL LINE-ITEM VETOES OF BUDGET ITEMS IN 1997 WILL SAVE THE TAXPAYERS $569 MILLION OVER FIVE YEARS, ACCORDING TO THE CONGRESSIONAL BUDGET OFFICE. NOW, ONE YEAR'S EXPERIENCE IS PROBABLY NOT A SUFFICIENT AMOUNT OF TIME TO FULLY EVALUATE THE BUDGETARY IMPACT OF THE LINE-ITEM VETO, BUT I WOULD SAY SAVING $569 MILLION IS NOT AN INSIGNIFICANT BEGINNING.

PERHAPS HE COULD EVEN BE MORE AGGRESSIVE – IF NOT MORE SELECTIVE – IN ITS UTILIZATION. I BELIEVE THAT IF USED PROPERLY, THE LINE-ITEM VETO CAN BRING ALL SIDES -- REPUBLICAN AND DEMOCRATS – THE PRESIDENT AND THE CONGRESS – TO THE TABLE TO NEGOTIATE AND PRODUCE FISCALLY RESPONSIBLE SPENDING BILLS THAT FUND NECESSARY PROJECTS.

I AM CERTAINLY NOT IN FAVOR OF MISAPPLICATIONS OF THE LINE-ITEM VETO, WHETHER IT IS THE PRESIDENT SEEKING TO USE THE VETO AS A CLUB TO BEAT CONGRESS INTO ACCEPTING HIS PRIORITIES OR WINNING

SUPPORT FOR OTHER ISSUES, OR AS LEVERAGE TO WIN VOTES OR ANY OTHER MANEUVER. BUT IN THE END, IF IT IS WIELDED IN THE RIGHT WAY, IT CAN BE A VERY EFFECTIVE TOOL OF GOVERNING THAT SHOULD BE RETAINED.

THANK YOU VERY MUCH FOR THE OPPORTUNITY TO TESTIFY; I WOULD TAKE ANY QUESTIONS IF YOU HAVE ANY.

Mr. GOSS. I thank you very much. I assure you your testimony is very valuable to us, not just because you are a distinguished Member of this body, but you have had real experience with it as a Governor. That adds extra value for us and it will be carefully considered, I promise you. It also parallels very close with my own thoughts, so for that reason, I think it will be particularly welcome.

At this time, we will recess the subcommittee until 11:15, while we vote. Thank you.

Mr. CASTLE. Thank you, Mr. Chairman.

[Recess.]

Mr. GOSS. The committee will be back in order, and at this time we welcome the distinguished gentleman from California, Mr. Packard, for his testimony. I believe we have a statement which we will accept in its entirety without objection for the record, and welcome comments you may wish to address as well.

STATEMENT OF THE HON. RON PACKARD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. PACKARD. Well, I certainly don't intend to read the statement. I think the major point I would like to make, maybe two or three, Mr. Chairman, is I support strongly the line item veto. I have all along. I think we ought to do all be can to maintain it. I realize it may be the courts that will make the final decision, but certainly I hope that we will do what we can to allow the President to continue to use that power.

I think my experience with my bill demonstrates, though, how important it is that the President use that power very carefully and judiciously and fairly—

Mr. SOLOMON. Let me interrupt for just a minute. I am going to miss your testimony but I appreciate all your work on this.

Mr. PACKARD. Read my testimony very carefully.

Mr. SOLOMON. I will.

Mr. GOSS. The chairman of the Rules Committee has spoken.

Mr. PACKARD. I think the thing I would like to bring before this committee is the fact that it was confusing, as we moved through, and I think mine was the first line item veto that addressed projects and so forth. There was, I think, one before, and it very well could be the last that we have if courts uphold what has already been decided. But I think the thing that I perceived most is it was a confusing process. Many Members felt when they voted on it the first time, that that was it, it was not a two-step process. They never even realized it was a two-step process, and we had well more than two-thirds majority on the first vote, the motion of the disapproval, and they thought, well, that was all that was necessary, that we have overridden the President's line item veto. But that wasn't the case, of course. It is a two-step process.

I don't know whether I would recommend we change that to a one-step process, but in some way we need to either educate the Members or at least they need to realize that it is two votes. To ask the Members to vote against their President twice is not as easy as some would think, and so that was the only thing that I observed in the process that I experienced with the bill, is that it was confusing to many Members. They said, well, didn't we do this

before and why do we have to do it again? And that is my only comment.

[The statement of Mr. Packard follows:]

RON PACKARD
48TH DISTRICT, CALIFORNIA

COMMITTEE
APPROPRIATIONS
SUBCOMMITTEES
CHAIRMAN: MILITARY CONSTRUCTION
TRANSPORTATION
FOREIGN OPERATIONS

2372 RAYBURN HOUSE
OFFICE BUILDING
WASHINGTON, DC 20515-0548
(202) 225-3906

Congress of the United States
House of Representatives

PLEASE REPLY TO:
221 EAST VISTA WAY
SUITE 208
VISTA, CA 92084
(760) 631-1384

629 CAMINO DE LOS MARES
SUITE 204
SAN CLEMENTE, CA 92673
(714) 496-2343

http://www.house.gov/packard/

STATEMENT OF
HONORABLE RON PACKARD
RULES SUBCOMMITTEE ON LEGISLATIVE AND THE BUDGET

"Line-Item Veto Authority"
March 12, 1998

I would like to thank Chairman Goss, Congressman Moakley and the members of this subcommittee for having me here today. As a longtime supporter of the line-item veto, I have a special interest in ensuring that this new authority is used effectively for the purposes Congress envisioned when it was created.

Although I recognize that the final fate of the line-item veto may ultimately be decided by the Supreme Court next month, I am hopeful that the Executive Branch will be permitted to retain this authority and that my testimony will be helpful as Congress examines and refines the line-item veto procedure.

My experience this past year as Chairman of the Military Construction Appropriations Subcommittee has given me considerable insight into the process by which Congress enforces the use of this new authority. As most of you may recall, last year's Military Construction bill, which my subcommittee authored, was the first spending bill to draw cancellations by the President under this new authority. In all, the President canceled 38 projects.

It quickly became clear that an overwhelming number of Members on both sides of the aisle felt the President erred in his use of the line-item veto on the Military Construction bill. Following the provisions of this new authority, Congressman Joe Skeen introduced a resolution of disapproval which, if passed and signed into law, would restore the projects canceled by the President.

Gathering support for this effort was not difficult, as most Members believed that a two-thirds majority, as with any other veto override, would effectively restore the canceled projects. Incidentally, that resolution of disapproval passed 352 to 64, well more than the 2/3 majority needed to override a veto. Shortly thereafter, the Senate also passed the resolution in excess of the 2/3 needed to override a veto.

A few days later, while Congress was no longer in session, the President vetoed the disapproval measure, despite the fact that our previous votes clearly showed that both houses of Congress had

more than enough support to override his veto of this latest legislation.

By the time we returned from recess, many Members had simply thought that Congress already restored the projects the President had canceled and were quite surprised to find we had to vote again to complete the process. Many Members thought we had resolved this all the first time and considerable confusion was caused as we tried to explain why this second vote was now necessary.

Change can be difficult, and we are not immune to the confusion that can be caused anytime we make new rules or change the way this institution works. The line item veto adds a completely new element to the legislative process and I think that, overall, Congress did well in handling this new authority.

However, I do think we can improve the process by eliminating the second step. You may have good reason to keep the process as it is, but my experience leads me to believe that if we are going to effectively maintain Congressional oversight of this authority in the future, we must make that oversight process simpler. If Members of Congress can't understand the process, how can we expect the American people to?

In closing, I would like to state again that I am a strong supporter of the line-item veto and I am hopeful that the Supreme Court will allow this new authority to stand. If used properly, the line-item veto is a powerful and useful tool to combat wasteful spending. However, we must ensure that the role Congress plays in this process is effective and free from confusion.

Once again, I want to thank the members of this subcommittee for having me here today. I hope my testimony adds a perspective that is helpful to you as this subcommittee continues to study and refine the line-item veto procedure.

Thank you.

Mr. GOSS. That is very helpful testimony. Thank you for that; because we would agree that there is a very definite learning curve by all parties in this, in the White House as well as the Hill, and that has turned out to be the case. It is a complicated process and it does take some explanation, just debating it.

I recall trying to explain it on the floor when we actually passed the bill. I am not sure that everybody was clear even then when it was fresh and being sort of dissected a bit at a time.

I don't know what the Supreme Court is going to do. I think that is a constitutional question. We will leave that to them.

The question of how we are going to deal with mechanisms to provide enhanced accountability for spending and will continue to provide mechanisms that presumably create a bias for less spending or less waste, less wasteful spending, is going to be an ongoing process for this Congress, I think for any Congress, for a long time to come.

Mr. PACKARD. If the Chairman would allow.

Mr. GOSS. Please.

Mr. PACKARD. I am not as concerned about the depletion or the redistribution of power from the Congress to the President as many Members, particularly on the Senate side, are. I think if it is handled properly, we still retain the ultimate decision, and so I don't have as much concern in that respect.

I simply, having supported the process, wanted to operate and work effectively and efficiently and without a great deal of confusion, and that is what I saw as confusion a little bit. Perhaps if the President—I think normally, the President would not veto and thus force a second step, seeing such an overwhelming vote in both the House and the Senate that exceeded the two-thirds majority. Even though it only required a simple majority, it did exceed, and I think it is unusual that a President could then proceed after that to veto and require a two-thirds second vote. If we were under, if we were short of the two-thirds majority in the motion of disapproval, then I can understand a presidential veto, but in this instance, I think in most cases, the President would not have vetoed the second time around. That was a surprise, I think, to all of us.

Mr. GOSS. I think there was a learning curve, and there was an admission at the White House that there was a learning curve. Your testimony is particularly valuable because of the experience you have had, and I appreciate the time you took to come up.

We call the Honorable David Skaggs from Colorado, and I believe we have written input.

Mr. SKAGGS. No, I don't believe you do.

Mr. GOSS. We welcome you here and we invite your comment on process and related matters.

STATEMENT OF THE HON. DAVID SKAGGS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO

Mr. SKAGGS. Thank you, Mr. Chairman. I appreciate the opportunity to testify, and I offer my sympathy in that I think the objective of the hearing is to try to rationalize the irrational. This is a difficult task at best, and I am afraid I will stray a little bit beyond

the precise jurisdiction that the committee is exercising in holding the hearings.

The mechanics I think, are inherently awkward because the concept is inherently awkward, and so we shouldn't be at all surprised that Members are confused by the way all of this is carried out. Two pieces of the mechanical weirdness of the line item veto, in my view, are the tax provision part of the line item veto legislation, which is, as you know, the part that is really at issue in the pending litigation, and the arbitrary judgment we asked the Joint Committee on Taxation to make in determining *a priori* what the class of beneficiaries or victims may be of a particular narrow tax provision.

I think anybody who is being honest about the reasonableness of the task that we have given to the Joint Committee on Taxation under that statute would admit that this is at best filled with lots of fudge factors and educated guesses. That such a transfer of power to the President from the Congress is conditioned on an essentially unreviewable judgment, made by unelected staffers on the Joint Committee on Taxation, further reveals the underlying wackiness of this approach to governance.

Another item that lends itself to some intellectual fun is the limitation placed on the President's exercise of the line item veto under the statute at five days, or five business days, I think it may be, from receipt of the enrolled bill from the Congress. And I think anyone who looks into the policy represented by this five day figure enters a very interesting road of unreason. I mean, why five days? If we are constitutionally able to give the President five days, why not five weeks, why not five months, or why not five hours or five minutes? It is, again, I think, clearly a grab at something that is inherently elusive; i.e., the notion that, once a bill becomes law by the signature of the President, we can somehow create this constitutional metaphysic for five days in which something that has been done can be undone. And I think that, again, is powerful evidence of the irrationality in all of this.

Our objective, I think—and hearing a bit of Mr. Packard's testimony, I don't have any disagreement with the objective—is to devise better tools with which both Congress and the President can get at whatever propensity Congress may still have toward wasteful spending and excess. We all know that despite improved efforts by our colleagues and us, we occasionally still err in this respect. And it is good to have a corrective mechanism in place.

I really believe that the traditional constitutional veto provided for the President in the Constitution, combined with some variation on the expedited rescission legislation that I have introduced (and it is not original with me but I happen to have the bill that is there at the moment) would get the job done and get it done constitutionally, without the very, very troubling transfer of major power from Congress to the President, which I don't believe we can do constitutionally, but which we have attempted. The Constitution vests this power solely in the Congress and it is not ours to transfer elsewhere.

As the Chairman knows, under expedited recission, the President would be able to flag any items that run afoul of his standards of wasteful spending, pull them out of the typically large number of

items included in the appropriations bill, and require us, on an expedited basis, to vote up or down on the separate items. I think that achieves 90 percent, probably, of the objectives of the Line Item Veto Act, that is, enforcing accountability on some of the things that slide through here under cover of darkness and beneath the radar. It forces us to have a clear vote on them, and I think on most cases, when this place is forced to address things in a case-by-case basis like that, we will end up doing the right thing if an item doesn't pass the smell test.

We should be mindful that while this House is inherently democratic, the Senate is not. Under the current arrangement under the Line Item Veto Act, we really do have the not-theoretical possibility that one third of the Senate, representing less than 10 percent of the people in this country, could exercise effective power—and that is not something I think we want to encourage any more times than the Constitution already contemplates.

Finally—and this gets way beyond the stated purpose of your hearing, but please indulge me for one more minute—I think it is an illusion, a seductive illusion but nonetheless an illusion, that this attempted rearrangement of power between the legislative and executive branches is likely to cause us to end up spending less. I think we saw the inherent character of negotiation last year in the way the Balanced Budget Agreement was worked out, in which all sides came to the table with certain needs and all sides departed, essentially, with their needs met, by spending more, not less, on our road to the balanced budget. And we all know that is the way most difficult situations around this town are resolved. It is not by everybody sacrificing, it is by everybody gaining. And I believe the same dynamic will end up playing itself out in the operation, year by year, of the line item veto (if we are not saved by the Supreme Court) that is that—now that the President has shown us that he is willing to use this power and thereby has authenticated it in some real sense—the negotiation will occur not on the floor of the House by votes against line item vetoes, but behind the scenes, out of public view, entirely contrary to the objective of additional accountability that is the stated purpose of the Line Item Veto Act. And it will be a negotiation in which the President of the United States will be empowered to deal with Members of this Congress, both individually and collectively, to get his way on things that are important to him, often involving spending but not always involving spending, and sometimes involving policy, in return for letting us get our way on things that might otherwise run afoul of the exercise of line item veto, whether because the President judges it wasteful or whether because he wants to use it as leverage and means of extortion against Congress to get what he wishes from us.

And while we are in perhaps benign times historically right now in the historic power struggle between executive and legislative, I think we should be aware that we legislate often on a more permanent basis than we may think. And I ask my Democratic friends who support the Line Item Veto Act to examine their hearts about how they might have felt had it been in the hands of, for instance, President Nixon, who on some occasions was known to wish to overreach his authority a bit, and my Republican friends to think about how they would have felt had President Johnson had this

power, who reportedly had some of the same propensities and therefore whether it is really a wise thing for us to have done.

Mr. GOSS. I think that is—those are very worthwhile questions and the kind that Members of Congress, on behalf of the people of the United States of America, need to ask all the time, and every year certainly, and every day.

I thank you very much, David, for your testimony. It is very useful. You have been a very articulate spokesperson on this whole subject all along, and I don't disagree with a good deal of what you say, particularly about expedited rescission. I think it is a pretty good process, as you have outlined. It is an idea that has been kicking around. The line item veto has been kicking around, too, and we decided to try that and see where it takes us, and I promised that after a year, if this thing got passed, that we would take a look at the process. And we have taken a look at it, and we found actually—for as complex and confusing as it is, we have found actually surprisingly little in terms of conflict about it, and probably that is because people are still trying to figure it out as much as anything else.

We have had some specific suggestions in the area that you mentioned, the five day rule, not from the constitutional question, but from the practical aspect. If you get five appropriations bills all within a day or two of each other down at the White House, is five days enough for each of those bills? That is a problem.

The tax benefit question which you raise is a question that we originally started out not including. We had to include it because a lot of people wanted to talk about tax benefits and, of course, mandatory spending side of the budget as well since the basic purpose of the whole thing was to try and enhance accountability. And understand, the word "try" is operative there. It always is when you are dealing with accountability and transparency and this and that. And the other one was to try and create a bias toward savings as opposed to spending, which is a philosophical, if not ideological, debate.

And I think that what we have learned so far is that we have a process that we might be able to deal with if we do a little cleanup on some of the procedure. If the Court leaves it untouched, we will take a look at it again in another year, as we promised we would do, knowing that we are looking at a sunset anyway.

I would suggest that where I am on it now is intensive monitoring, awaiting a Court decision, and if we are still here after the Court gets through, then I would suspect we would be having this kind of conversation again with perhaps a little adjustment in procedure.

Mr. SKAGGS. Well, I—

Mr. GOSS. So your testimony is very valuable, and I know it gets somewhat off the subject of what we are here for, but frankly, we are thinking beyond what we are here for.

Mr. SKAGGS. We went through the drill with the courts a year ago and ultimately the Members' case was dismissed for lack of standing. I don't think that will be a problem in the current litigation, but the problem in the current litigation may be, if the Court is inclined to come down with a narrow decision, that it would be limited to the tax benefit part, and another case will have to be

brought to deal with the underlying issue of the appropriations part, because there really is—if they wish to make a narrow decision—a basis for doing that.

Mr. GOSS. I would never try and guess what the Supreme Court is going to do. I sometimes can't figure it out after they have done it.

I thank you very much for your testimony.

Mr. SKAGGS. Thank you.

Mr. GOSS. This completes our 2 days of hearings and all of the witnesses that we had said that we would consider. I understand that we will be leaving the hearing record open through the end of this working day for submission of testimony from other Members, particularly Representative Chris John of Louisiana, who has asked such leave.

[The statement of Mr. John follows:]

Statement of
Congressman Chris John
House Committee on Rules
Subcommittee on Legislative and Budget Process
"The Line Item Veto After One Year"

Mr. Chairman and Members of the Subcommittee:

Thank you for calling this hearing today to discuss the Line Item Veto Act. Though I was not a Member in 1996 when it was signed into law, I testify today in support of the Act and the fiscal responsibility it represents. I thank the Chairman and the Subcommittee for the opportunity to share my views on this subject today.

Mr. Chairman, I know all of you share my enthusiasm over the continued expansion of the economy and the economic forecasts predicting a budget surplus as early as this year. In addition, we are all aware of the debate currently being waged with respect to what our priorities should be if we experience a budget surplus; however, now is NOT the time to abandon our fiscal belt-tightening. Rather, the tools we now have in place to ward against pork-barrel spending need to be preserved and enhanced. While I recognize that the ultimate fate of the Line Item Veto Act may be determined by the Supreme Court soon, I am hopeful that the President will be permitted to retain this authority.

As you well know, the impetus behind the line item veto was, in part, to ward against wasteful spending -- a concern that I believe is paramount regardless of whether a budget deficit or surplus exists. It is with this particular concern in mind that I submit this testimony. Assuming that the Supreme Court upholds the Line Item Veto Act of 1996, without legislative action this year, the Act and the fiscal responsibility it represents will still be endangered due to a technicality.

Under current law, the President may enroll this authority <u>only</u> in the event of a budget deficit. Regardless of our opinion over how the President recently used this authority, if we support the ideal behind the legislation, we must remain vigilant against wasteful spending and provide this continued authority in the event of a budget surplus. I believe that those of my colleagues who were critical of this authority might find solace in the way that the FY 1997 Military Construction Appropriations Bill fared this year. In addition, the CBO estimates that as a result of the line item veto procedure, $569 Million of wasteful spending was saved in 1997. Mr. Chairman, the procedure works, but it needs to be preserved.

Last month, I dropped a bill, H.R. 3228, in part because I believe it remedies the problem, but also with the hope that it would be helpful as Congress examines and refines the line-item veto procedure.

Mr. Chairman, my colleagues, Mr. Roemer and Mr. Upton, have identified this same

problem in legislation they have introduced, H.R. 2424. However, while we both address the same problem, I present to you an alternative solution which I believe would be preferable to simply striking the line item veto's deficit requirement as done through H.R. 2424. My proposal would preserve the continuation of the line item veto by adding language to the Act clarifying its applicability during a budget surplus and directing the savings to be used to reduce the national debt. This not only provides clear congressional intent in support of using the line-item veto during years of a budget surplus, but also limits the delegation of authority to addressing the national debt in those years. I am confident that Congress carefully considered the implications and the specific constraints of the Line Item Veto Act before its final passage in 1996. In addition, I believe that Congress acted judiciously in delegating a carefully defined authority to the President providing him with an important budgetary tool. With this in mind, I am concerned that H.R. 2424 would make the line item veto more Constitutionally suspect because it results in a substantially larger delegation of authority to the President.

In closing, I would like to reaffirm my strong support for the Line Item Veto Act. In addition, I pledge to you my considerable time and effort and would welcome the opportunity to work with you and the Subcommittee preserve the Act.

Once again, I thank the Chairman and the Subcommittee for having me here today. I hope my testimony provides a perspective that is helpful to you and this subcommittee

105TH CONGRESS
2D SESSION

H. R. 3228

To amend the Line Item Veto Act of 1996 to add the requirement that if Federal budget is in surplus then the vetoed item shall be used to reduce the public debt.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 12, 1998

Mr. JOHN (for himself, Ms. STABENOW, Mr. SHERMAN, Mr. STENHOLM, Mr. BERRY, Mr. BOYD, Mr. HOLDEN, Mr. GOODE, Mrs. TAUSCHER, Mr. PETERSON of Minnesota, Mr. SHERMAN, Mr. CONDIT, Mr. BARRETT, Mr. MINGE, Mr. HALL of Texas, Mr. BISHOP, and Mr. CRAMER) introduced the following bill; which was referred to the Committee on the Budget

---

A BILL

To amend the Line Item Veto Act of 1996 to add the requirement that if Federal budget is in surplus then the vetoed item shall be used to reduce the public debt.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That section 1021(a)(A)(i) of the Line Item Veto Act of 1996 is amended by inserting "or, if the budget is in surplus, will be used to reduce the public debt" before the semicolon.

O

[Questions and answers to CBO, submitted for the record]

Committee on Rules
U.S. House of Representatives
Washington, DC 20515–6271

SUBCOMMITTEE ON LEGISLATIVE AND BUDGET PROCESS

March 24, 1998

Ms. June O'Neill
Director
Congressional Budget Office
401 Ford House Office Building
Washington, DC 20515

Dear Director O'Neill:

Thank you for your testimony before our Subcommittee on March 11 assessing the performance of the Line Item Veto Act after one year. We appreciated your comments and your written testimony.

We have several additional questions we would like to pose to you for written response, to be included in the eventual publication of the record from our Subcommittee's two days of oversight hearings on the Act.

(1) Please explain the difference in the savings estimates offered by CBO and OMB for the President's cancellations. The net savings attributed to the Line Item Veto by your analysis indicate a net five-year savings of $569 million, while the numbers from OMB suggest a higher level of $798 million.

(2) Please provide the Subcommittee with a more detailed description of the role CBO plays in the Line Item Veto process. For example, does your office prepare formal documents detailing the anticipated savings from any veto actions taken by the President? Would formalization of such a process require a change in statute or House rules?

(3) Line Item Veto is usually discussed in the context of discretionary spending and/or appropriations. Do you have any specific comments about the application of the law to new direct or mandatory spending and limited tax benefits? Does CBO have any formal role in the Line Item Veto process, specifically the Congressional response to a veto, relating to any of these types of spending or tax benefits?

(4) In your testimony, you stated that the Act might change Congressional behavior in "subtle ways that are difficult to observe." We are interested in your view of how committees might, as you said in your testimony, "modify the structure of spending and revenue legislation to protect certain provisions and effectively circumscribe the President's authority. . ." Can you give us any specific examples, beyond what you cited in your testimony, of how that might be done?

We look forward to reviewing your responses to these questions. Please send them to the attention of: Wendy Selig in 108 Cannon House Office Building.

Thank you again for your assistance.

Porter J. Goss
Chairman

Martin Frost
Ranking Democratic Member

The Congressional Budget Office's
Responses to Questions on the Line Item Veto Act
Submitted for the Record
by the Subcommittee on Legislative and Budget Process

Question

"Please explain the difference in the savings estimates offered by CBO and OMB for the President's cancellations. The net savings attributed to the Line Item Veto by your analysis indicate a net five-year savings of $569 million, while the numbers from OMB suggest a higher level of $798 million."

Answer

For the 1997 cancellations that remain in effect, nearly all of the difference between Administration and Congressional estimates is attributable to the two limited tax-benefit cancellations. In his special message on those cancellations, the President estimated that they would save about $415 million from 1998 through 2002. The Joint Committee on Taxation (JCT), by contrast, estimated that the two cancellations would save about $180 million during that period. CBO is required by law to use only JCT estimates of revenue legislation.

For the appropriation act cancellations that remain in effect, CBO and OMB differed by $3 million in their estimates of the five-year outlay savings ($191 million versus $194 million, respectively). The outlay estimates differed by up to $10 million for individual years during that period because of different projected spending rates for the affected appropriation accounts.

For the single item of new direct spending that the President canceled in 1997, OMB adopted CBO's cost estimate for purposes of the Line Item Veto Act.

As I noted in my testimony, CBO and OMB produced substantially different estimates of the President's cancellation of the Federal Employees Retirement System (FERS) open-season provision in the 1998 Treasury appropriation act. (That cancellation, however, was nullified by court order earlier this year.) CBO estimated that the cancellation would save about $100 million from 1998 through 2002, whereas OMB estimated that it would save $854 million over that period.

That difference results because CBO estimated that a lower percentage of federal employees would switch retirement systems in a new open season than OMB did. However, as we testified last November, the Administration's estimate is certainly not implausible. CBO also classified the projected change in employee

contributions under the FERS provision as a change in revenues, whereas the President classified it as a form of new discretionary budget authority. Further, our estimate of the cancellation counted certain on-budget direct spending (offsetting receipts) and revenues (income tax payments) that the President did not count in his special message.

Question

"Please provide the Subcommittee with a more detailed description of the role CBO plays in the Line Item Veto process. For example, does your office prepare formal documents detailing the anticipated savings from any veto actions taken by the President? Would formalization of such a process require a change in statute or House rules?"

Answer

As with the sequestration process under the 1985 Deficit Control Act, CBO's role in the line item veto process is purely advisory. The President uses his own estimates and determinations (generally prepared by OMB) to exercise his cancellation authority.

CBO's only explicit duty under the Line Item Veto Act is to provide the House and Senate Budget Committees as soon as practicable with our estimate of the change in budget authority and outlays caused by any cancellation. We issue estimates for all of the President's cancellations (in the case of limited tax-benefit cancellations, those estimates are made by the Joint Committee on Taxation) and transmit them by letter to the Chairmen and Ranking Members of the Budget Committees as soon as possible after the cancellations are made. We prepare a single letter for each special message.

The managers' statement in the conference report that accompanied the Line Item Veto Act included additional directives to CBO. The conferees explicitly directed CBO to ignore the budgetary effect of any cancellation or disapproval bill for Congressional scoring purposes. Thus, we do not adjust our current-level estimates (used to enforce compliance with the budget resolution) for the savings from any cancellation or the cost of a disapproval bill. The conference report also states that CBO and the Budget Committees are expected "to carefully monitor OMB's estimates of cancellations."

Unless the Congress wishes to make major changes in CBO's role in the line-item veto process, no further statutory language is necessary for CBO to carry out its duties and functions under the act. Committees or Members can request additional information or analysis by contacting us directly.

Question

"Line Item Veto is usually discussed in the context of discretionary spending and/or appropriations. Do you have any specific comments about the application of the law to new direct or mandatory spending and limited tax benefits? Does CBO have any formal role in the Line Item Veto process, specifically the Congressional response to a veto, relating to any of these types of spending or tax benefits?"

Answer

All but three of the 82 cancellations that the President made in 1997 involved amounts provided in appropriation acts. The other three cancellations affected provisions in the two 1997 reconciliation acts: one item of new direct spending and two limited tax benefits. Two of those—involving a Medicaid provision affecting New York State and taxes on the sale of stock to certain farmer cooperatives—are the subject of legal challenges before the Supreme Court.

The President's cancellation authority over new direct spending and limited tax-benefit provisions presents some issues that are not raised by his authority to cancel new discretionary budget authority. For example, in canceling direct spending, the President must identify legislative language that increases direct spending above baseline levels. That task is inherently more difficult and ambiguous than simply selecting a dollar amount set forth in law or a committee report. For limited tax benefits, a similar problem arises if the Congress for some reason does not include the JCT statement identifying limited tax benefits in the affected law. That statement has the effect of clarifying and constraining the President's authority to cancel such provisions.

Beyond our responsibility under the act to provide advisory estimates of the President's cancellations, CBO has no additional formal role in the cancellation of new direct spending or limited tax benefits.

Question

"In your testimony, you stated that the Act might change Congressional behavior in 'subtle ways that are difficult to observe.' We are interested in your view of how committees might, as you said in your testimony, 'modify the structure of spending and revenue legislation to protect certain provisions and effectively circumscribe the President's authority. . .' Can you give us any specific examples, beyond what you cited in your testimony, of how that might be done?"

Answer

Studies of the item veto at the state level have documented several devices that state legislatures commonly use to limit governors' item-veto authority. For example, according to a recent report by the Congressional Research Service, state legislatures have attempted to limit governors' item-veto power by appropriating funds in large, lump-sum accounts with few or no earmarks; by removing dollar amounts and other details from the accompanying reports; by using informal documentation (such as letters and other informal communications) to allocate funds and avoid the item veto; and by including legislative provisos that specifically limit item-veto authority in certain cases (Louis Fisher, *State Techniques to Blunt the Governor's Item-Veto Power*, CRS Report 96-996 GOV, December 12, 1996).

Mr. GOSS. Are there any other Members?

I thank the members of the staff for an excellent job, and I thank all of those who participated. I think these have been very useful hearings. I think this is a matter that obviously has a great interest among Members. The subcommittee takes its responsibility very serious in this area, and we will continue to discharge our responsibilities with regard to the line item veto in whatever manifestation it appears before us. And without further objection, the meeting is adjourned.

[Whereupon, at 11:35 a.m., the subcommittee was adjourned.]