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WITHDRAWAL SHEET

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. memo	M.B. Oglesby to Baker 1 p.	2/13/84	P6, F6 B6
2. memo	Oglesby to Baker re telephone access charge legislation 2 p.	1/20/84	P5 6/3 10/5/00

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P-1 National security classified information [(a)(1) of the PRA].
- P-2 Relating to appointment to Federal office [(a)(2) of the PRA].
- P-3 Release would violate a Federal statute [(a)(3) of the PRA].
- P-4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA].
- P-5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA].
- P-6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA].
- C. Closed in accordance with restrictions contained in donor's deed of gift.

Freedom of Information Act - [5 U.S.C. 552(b)]

- F-1 National security classified information [(b)(1) of the FOIA].
- F-2 Release could disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA].
- F-3 Release would violate a Federal statute [(b)(3) of the FOIA].
- F-4 Release would disclose trade secrets or confidential commercial or financial information [(b)(4) of the FOIA].
- F-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA].
- F-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA].
- F-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA].
- F-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA].

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THIS FORM MARKS THE FILE LOCATION OF ITEM NUMBER 1 LISTED ON THE
WITHDRAWAL SHEET AT THE FRONT OF THIS FOLDER.

THE WHITE HOUSE

WASHINGTON

February 3, 1984

R.F.

✓

MEMORANDUM FOR ROBERT C. MCFARLANE

THRU: M. B. OGLESBY, JR. *Bo*
FROM: W. DENNIS THOMAS *JK*
SUBJECT: Ken Dam Meeting with Congressman Michael
Barnes (D-MD) on El Salvador Certification
Issue

We met today with Mike Barnes (D-MD) and Congressman Lagamarsino (R-CA) to discuss whether a middle ground on conditionality can be reached. I believe Ken will provide a more extensive report, but in short, it was a positive meeting and offered some areas for potential agreement.

Barnes has agreed to talk with the key members on his side--Congressman Solarz (D-NY), Lee Hamilton (D-IN), and Dante Fascell (D-FL)--to come up with draft language. Dam similarly agreed to work on language with which we could live. A follow-up meeting will have to occur early next week.

On a related matter, the Barnes vote on certification is still on for Tuesday. I spoke with Michel, who has since talked with Congressman Wright (D-TX) and Congressman Foley (D-WA), and they have agreed (and Barnes concurred) to attempt to have Tuesday's vote by voice. No guarantees, but they will try. (We will not want to advertise this.)

cc: ✓ Jim Baker
Chris Lehman

THE WHITE HOUSE

WASHINGTON

MEETING FOR JAMES A. BAKER III
WITH SELECTED MEMBERS OF THE
HOUSE AND SENATE ON THE LEGISLATIVE
PACKAGE FOR CENTRAL AMERICA

DATE: February 1, 1984
LOCATION: Roosevelt Room
TIME: 3:00 p.m. (one hour)
FROM: M. B. Oglesby, Jr.

I. PURPOSE

To consult with key House and Senate leaders prior to the finalization of the Administration's legislative package on Central America, and to secure their support for the package.

II. BACKGROUND

On January 11, 1984 the findings and recommendations of the Kissinger Commission were announced. Since that time, the Administration has been reviewing the report and analyzing possible legislative proposals and strategy. In order for the Administration to have a reasonable prospect for legislative success this year, it is vitally important for key Congressional leaders to sign on--or at least not object--to the legislative package before it is transmitted to the Hill. In this regard, it is felt that the key Congressmen and Senators desire to have a voice in shaping the legislative package--particularly with respect to the issue of "conditionality." Our ability to assemble a relatively broad-based bipartisan coalition is particularly crucial to our prospects for success in the House.

The President pocket vetoed the bill H.R. 4042--which would have extended the existing certification requirements associated with American aid to El Salvador (i.e., "conditionality")--on November 30, 1983. Since that time, a group of Congressmen led by Michael Barnes (D-MD) has filed a suit challenging the constitutionality of this pocket veto. According to published reports, the Senate leadership may join the suit; and there are renewed indications that House Republican leaders also are considering joining the suit. On Thursday, January 26, 1984, Representative Barnes and eighty House cosponsors introduced H.R. 4656. If enacted, this bill would reinstate the certification requirements which were voided by the President's veto until such time as new legislation

is enacted to provide conditions on U.S. military assistance to El Salvador or until the end of Fiscal Year 1984, whichever comes first. House Floor action has not been scheduled. However, the bill could be considered in the House as early as next week. It is hoped that the "conditionality" issue can be resolved in the overall context of the Central America legislative package to be discussed during this meeting.

III. PRESS PLAN

There will be no press coverage during the meeting. However, it is anticipated that Congressional participants will encounter Press Corps representatives while entering and departing the White House.

IV. SEQUENCE OF EVENTS

- 1) Opening remarks by Jim Baker
- 2) Summary of legislative package by Ken Dam
- 3) Open discussion with congressional participants

Attachments: (A) List of Participants
(B) Talking Points (Provided by NSC)

Attachment A

PARTICIPANTS

James A. Baker III
Richard Darman
Robert McFarlane
Ken Dam
M. B. Oglesby, Jr.
Dennis Thomas
Pam Turner
Chris Lehman
David Wright
Mike Hudson
Al Keel
Tapley Bennett

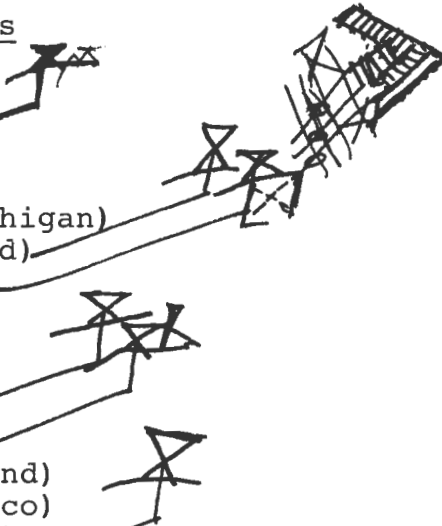
Congressional Participants

House:

Jim Wright (D-Texas)
Jack Kemp (R-New York)
William Broomfield (R-Michigan)
Michael Barnes (D-Maryland)
Dante Fascell (D-Florida)

Senate:

Lloyd Bentsen (D-Texas)
Daniel Inouye (D-Hawaii)
Charles Mathias (R-Maryland)
Pete Domenici (R-New Mexico)
Charles Percy (R-Illinois)
Bob Kasten (R-Wisconsin)
Claiborne Pell (R.I.)



TALKING POINTS

APPRECIATE

-- APPRECIATE YOUR COMING TO THIS MEETING.

UPDATE

①

WANTED TO BRING YOU UP TO DATE ON OUR EFFORTS TO MOVE FORWARD ON THE KISSINGER COMMISSION RECOMMENDATIONS.

-- EVERYONE HERE RECOGNIZES THE IMPORTANCE OF CENTRAL AMERICA AND THE NEED TO RAPIDLY ACHIEVE ECONOMIC DEVELOPMENT THERE AND POLITICAL STABILITY IN THE REGION.

-- WE SEE THE LEGISLATIVE PACKAGE WE CALL THE CENTRAL AMERICAN DEMOCRACY PEACE AND RECOVERY INITIATIVE ("THE HENRY JACKSON PLAN") AS A MEANS TO FULLY IMPLEMENT THE RECOMMENDATIONS OF THE BIPARTISAN COMMISSION.

-- THE COMMISSION RECOGNIZED THIS URGENT NEED IN THE RECOMMENDATIONS INCLUDED IN THAT REPORT.

②

THE PRESIDENT BELIEVES STRONGLY THAT WE MUST MOUNT A TRULY BIPARTISAN EFFORT TO IMPLEMENT THE RECOMMENDATIONS OF THE COMMISSION.

BIPARTISAN EFFORT

③

WE HAVE ASKED YOU HERE TO SHARE OUR THINKING ON A LEGISLATIVE PACKAGE AND TO SOLICIT YOUR VIEWS. WE WANT TO GET YOUR INPUT BEFORE WE FINALIZE OUR LEGISLATIVE PROPOSALS.

LEGIS. PACKAGE

③a THIS

PACKAGE IMPLEMENTS THE COMMISSION'S RECOMMENDATIONS

④

OBVIOUSLY, WE ALSO WANT TO SOLICIT YOUR SUPPORT -- AND WOULD LIKE YOU TO CONSIDER CO-SPONSORING THE LEGISLATION WHEN IT GETS UP TO THE HILL.

EVEN SOME OF US WE'RE NOT ENAMORED O

⑤

LET ME ASK KEN DAM TO GIVE YOU A BRIEF SUMMARY OF THE LEGISLATIVE PACKAGE AND THEN WE CAN GET INTO DISCUSSION.

→ of a proposed legis. package.

AUTH. BILL

THE WHITE HOUSE
WASHINGTON

January 23, 1984

R.F.
✓

MEMORANDUM TO EDWIN MEESE, III
JAMES A. BAKER, III
RICHARD G. DARMAN
LARRY SPEAKES
JOHN A. SVAHN

THRU: M. B. OGLESBY *fo*

FROM: W. DENNIS THOMAS *TH*

SUBJECT: House Budget Committee Report on
Line-Item Veto

Attached is a report from the House Committee on the Budget regarding Line-Item Veto. I am sure we can anticipate calls for the Administration's comments regarding the Committee's conclusions.

Analysis

Line-Item Veto: An Appraisal House Committee on the Budget

The Budget Committee staff "appraisal" principally attempts to discredit the line-item veto (LIV) concept as unnecessary (there are already extensive mechanisms and authority the President can exercise) and inconsequential (too much of the budget is shielded).

Although the historical descriptions of previous federal and state activity are by and large accurate, the analysis of arguments "pro and con" are clearly slanted to minimize consideration of LIV as a viable option for actual deficit reduction.

[COMMITTEE PRINT]

THE LINE-ITEM VETO: AN APPRAISAL

COMMITTEE ON THE BUDGET
U.S. HOUSE OF REPRESENTATIVES

[Prepared by the Staff of the House Committee on the
Budget]



JANUARY 1984

CP-4

Printed for the use of the Committee on the Budget

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1984

29-437 O

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CONNIE MACK, Florida

JOHN C. DILL, *Deputy Executive Director*

NICHOLAS A. MASTERS, *Special Assistant to the Chairman*

ALAN G. LOPATIN, *Associate Counsel*

(iii)

INTRODUCTION

An issue of emerging importance is whether the President's power should be expanded to include a line-item veto of measures passed by the Congress. Throughout our constitutional experience no President has ever had this power.

At various times throughout our history, Presidents have requested delegations of authority to deal with line items more effectively. Today's debate, however, centers on whether we should have a constitutional amendment to provide this authority.

The question of a line-item veto has been raised at this point, largely, though not entirely, because of growing Federal deficits. A spate of articles have appeared in national publications such as the Wall Street Journal, the New York Times, and the Washington Post, arguing the pros and cons of this proposal.

The purpose of this report is to review the question of the line-item veto starting with the limits of the line-item veto as a deficit reduction instrument, a review of the current legislative authority of the President, a brief history of its use, both at the Federal and State level, and a summary of major arguments made for and against the proposal.

This report has been prepared by the staff of the House Committee on the Budget and does not necessarily reflect the views of any of its Members.

(i)

I. DEFICIT REDUCTION AND THE LINE-ITEM VETO

A great deal of confusion has emerged about the line-item veto as a deficit reduction instrument. While a line-item veto could allow reductions in expenditures, its usefulness would be extremely limited given the amounts that could be reduced in comparison to the size of the projected deficits.

The key reason for this is that budget expenditures would not be uniformly subject to a line-item veto. Current proposals for a line-item veto would limit its use to only those matters subject to discretionary annual appropriations. Interest on the national debt is a mandatory appropriation and must be paid in its entirety and therefore not subject to a line-item veto. Current law mandates that social security and other entitlements must be paid in their entirety or the Federal Government will be subject to suit from those meeting eligibility criteria. For example, using the preliminary 1985 CBO projection on expenditures which total \$925 billion, the following categories and amounts would be exempt from a line-item veto:

	<i>Billions</i>
● Net interest payments.....	\$116
● Social Security	189
● Medicare and Medicaid	98
● Other mandatory programs.....	92
	<hr/>
Total amount exempt from line-item veto.....	495

The areas where a line-item veto could reduce the deficit are national defense (\$265 billion) and nondefense discretionary (\$164 billion). Even in these areas, the line-item veto would have limited usefulness in achieving spending cuts. In defense, about \$110 billion in outlays is based on prior year budget authority or is otherwise committed, and therefore ineligible for a line-item veto. In nondefense discretionary programs, about \$78 billion in outlays is based upon prior year budget authority and likewise exempt from the reach of a line-item veto.

This means that of the total \$925 billion estimated for Federal expenditures in fiscal year 1985, only \$242 billion would be subject to a line-item veto.

Given the President's policies, however, this figure shrinks further. The President has requested *more* money for defense in the past than the Congress has enacted, not less. It is reasonable to assume that the President would not use the line-item veto power on the \$155 billion in defense spending that would be subject to such action. This leaves only nondefense discretionary spending, about \$86 billion, where the President could use a line-item veto. Included in this figure are appropriations for such programs as the FBI, Coast Guard, Drug Enforcement, Education and Training, Na-

from Institutes of Health cancer research, and many other items which have been supported by this administration in all of its budget plans.

Finally, of the \$86 billion mentioned above, preliminary administration reports reveal that the intention of the administration is to reduce spending in this area by no more than \$2.9 billion, which would be approximately 1½ percent of the projected deficit.

The items currently scheduled for major reductions include programs such as Headstart, Older Americans, Handicapped Rehabilitation, Social Services Block Grants and Child Welfare.

Finally, if one examines the fiscal year 1984 experience, the President's request differed in spending from what was actually appropriated in nondefense discretionary spending by about \$9 billion.

This difference was largely due to programs such as:

1. Postal subsidies—for the blind churches, veterans and other nonprofit organizations (\$0.5 billion above the President's request).
2. Natural resources—including environmental protection (\$1.3 billion above the President's request).
3. Education and training (\$1.3 billion above the President's request).
4. Low income energy assistance (\$0.5 billion above the President's request).
5. Discretionary health (\$0.5 billion above the President's request).
6. Mass transit (\$0.4 billion above the President's request).
7. Older Americans, Headstart, Child Welfare (\$0.3 billion above the President's request).

This, of course, is not an all-inclusive list but these are the major differences, and thus would be the most likely targets for an item veto.

Beyond this, whatever the long-term merits of a line-item veto, in the short run it could not solve our immediate problem of projected deficits for the 1980's in the \$200 billion range. This is true for two basic reasons: a) a constitutional amendment granting this power could not be proposed and adopted in a time period necessary to address the deficit problem, and b) as stated above, its applicability is limited in terms of the amounts that could be reduced in any given year.

The long-range concern about the item veto is basically a constitutional and political one. The issue is whether, under our separation of powers system, the President should have this increase in legislative power. The Constitution, itself, states very succinctly that "all legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives" (Article I, Section 1). Extending the President's veto power beyond what the Constitution now provides would allow the President largely to substitute his judgment for that of a majority of the Congress on specific policy items.

II. EXISTING MECHANISMS

The President of the United States has rather extensive legislative powers under our present constitutional system, which has been operative since 1789. Although the argument has been made that a simple statutory change redefining the word "bill" could give the President the power of a line-item veto, the general consensus is that a constitutional amendment would be required to effectuate the new power. This, in itself, would be a complicated and lengthy process. Surely, before one would want to embark on such a course, one should carefully review the current legislative powers encompassed in the Office of the President. The following is a review of the existing mechanisms of legislative authority the President currently has to address specific line items.

Under the Congressional Budget and Impoundment Control Act of 1974, Congress has delegated power to the President to control line item expenditures. This authority, of course, is subject to Congressional review, but nevertheless, is extensive. Under the act, the President can defer expenditures for any line item he prefers for any time not extending beyond the end of the fiscal year.¹ This, of course, does not produce any long term savings but it enhances the President's line-item control of the budget.

The act also confers upon the President the power to rescind specific line items of his choosing and the rescission will become permanent upon the approval of Congress within 45 days. This, in effect, means the President has vetoed the line item and has requested a simple majority vote to support his decision. The authorities under the act have been used extensively. In President Reagan's first 2 years in office, the Congress allowed more than three-quarters of his rescission requests, resulting in more than \$20 billion in lower spending.

We operate under a system of an "executive budget" within our constitutional system and the powers delegated to the President by the Congress in the Budget and Accounting Act of 1921, the Budget and Accounting Procedures Act of 1950, as amended, and the Congressional Budget Act of 1974.

The initial submission of a comprehensive plan lies in the hands of the President alone. A budget submitted by the President is a detailed document reaching to the account and subaccount levels. Following the budget submission the President submits specific legislative proposals in draft form to the various committees having jurisdiction over specific subject matter. These submissions are line items and the inclusion or exclusion of specific line items vests considerable power in the hands of the President. Given our present

¹ The power of Congress to disapprove Presidential deferrals remains in doubt following the Supreme Court's recent decision in *INS v. Chadha*, wherein legislative vetoes were ruled unconstitutional.

political system the President has at his disposal the use of the media on an ongoing basis to promote or oppose specific line items as they arise.

Of further importance is the President's state of the Union address. Every President since George Washington has included in his state of the Union address to Congress a legislative program, or at least the general outline of one, for Congress to consider. At the beginning of the second term of Thomas Jefferson's Presidency, for example, he included in his state of the Union address, proposals for inland waterways and public works programs.

Today, given the wide media coverage that this address receives, the event becomes a considerable legislative instrument for the President to garner widespread public support for his legislative program.

There are numerous examples where the President has used the powers outlined above to either insure the passage or defeat of specific line items before there was even any threat of the use of the ultimate veto power. President Reagan himself, in his first year of office, was able to pass over 90 percent of the programs and proposals he submitted to Congress, including measures that were highly controversial. The President was able to initiate specific changes in food stamps, medicare, weapons systems, defense, and other line-item areas.

A power available to but seldom used by the President is one to call special sessions of Congress. If a President is dissatisfied, as Harry Truman was in 1946, with the performance of Congress, he can call Members back into session. A President's call for a special session will invariably include a request for specific line items that he thinks are essential.

Of course, the President's constitutional power to veto entire bills has also found extensive use. Over the years, Presidents have exercised their veto power 2,413² times and those vetoes were overridden only 97 times. During his term, President Reagan vetoed 22 bills, 3 of which were overridden by Congress.

Initially, the general veto was used by Presidents to address congressional action which they considered unconstitutional. More recently, the general veto has been used as more of a negotiating tool, with vetoed legislation being sent back to Congress only to resurface in a form acceptable to both the Executive and the legislative branch. The current use of the veto is clearly based on line item considerations, since rarely does a President, including President Reagan, object to an entire measure. The most specific example of the use of the general veto to affect line items occurred in 1981, when President Reagan vetoed the continuing resolution providing authority for expenditures for the remainder of fiscal year 1982 because of his objections to specific line items. The bill was redrafted to meet those objections and later approved.

In conclusion, under current practice, the President has comprehensive legislative powers that reach to every line item that Congress considers.

² Includes 1,017 pocket vetoes (instances where the President fails to approve a bill after Congress has adjourned).

III. BRIEF HISTORY OF THE LINE-ITEM VETO

Article I, Section 7 of the Constitution of the United States provides:

Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a law.

While the President may either approve or disapprove a bill in its entirety, under the prevailing construction of Article I, Section 7, he lacks the power of an item veto with respect to measures passed by Congress.

The term "item veto" is used to describe the power of the executive to reduce or eliminate individual items in appropriation bills. Generally, an item-veto mechanism provides that, in signing a bill, the Chief Executive shall designate the appropriations and provisions to which he objects; and return a copy of such appropriations and provisions, with his objections, to the House in which the bill shall have originated. Most proposals provide that the same procedures would then be followed as with an ordinary veto, including reconsideration by the legislature with the requirement of a two-thirds vote for overriding the Chief Executive's veto. Other proposals call for the vote of a constitutional majority of both Houses to achieve the override.

History

While the framers of the U.S. Constitution did determine that the President had to be given the power to veto legislation if he was to remain independent of the Congress, the question of conferring on the President the power to veto individual items in appropriation bills was not even discussed in the Constitutional Convention of 1787.

The Chief Executive has attempted to exercise a line-item veto power in a number of ways. In 1830, President Andrew Jackson signed a bill and simultaneously sent to Congress a message that restricted the reach of the statute. The House, which had recessed, was powerless to act but subsequently issued a report interpreting President Jackson's actions as constituting a line-item veto of one of the bill's provisions. In 1842, President John Tyler signed a bill and advised the House that he had deposited with the Secretary of State "an exposition of my reasons for giving to it my sanction." In response, a House select committee issued a report protesting the action, saying that such extra-constitutional activity by the Presi-

The first instance of an item veto being written into an American Constitution occurred in the Provisional Constitution of the Confederate States adopted February 8, 1861. At about the same time, the national Congress began the practice of attaching legislative "riders" to appropriation bills. The practice arguably had the effect of diminishing the veto power of the President by forcing him to veto necessary appropriations if he wanted to disapprove the rider. Following the Civil War, the several States began to revise their constitutions to include such an item veto provision.

The practice of attaching nongermane riders to bills became so commonplace that, in 1873, President Ulysses Grant recommended, in a message to Congress, an amendment to the Constitution "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 portions or portion to be subject to the same rules as now." In response to building sentiment, on January 18, 1876, Representative Faulkner, of West Virginia, introduced H. Res. 46, the first constitutional amendment proposing to confer upon the President the power to veto items in appropriation bills.

President Grant's recommendation was renewed in 1879 by President Hayes and in 1882 by President Arthur. It was not until 1883, however, that the item-veto proposal was put to a vote. In that instance, a motion to suspend the rules so that the House Judiciary Committee might be discharged and H. Res. 267 passed, failed to achieve the required two-thirds majority for passage.

April 21, 1884, marked the only time the Senate Judiciary Committee favorably reported a resolution (S. Res. 18) proposing to amend the Constitution so as to confer on the President the power to veto items in appropriation bills. That bill was passed over for consideration in the 48th Congress. In 1913, hearings were held on a similar amendment (H.J. Res. 15), but that bill was not reported.

While Congress has not acted affirmatively on incorporating a line-item veto provision in the Constitution, it has, from time to time, granted item veto authority in organic laws to the Governor of the Territory of Hawaii (1902), the Governor of the Territory of Alaska (1912), the Governor-General of the Philippines (1916), the Governor of Puerto Rico (1917), and the Governor of the Virgin Islands (1954).

In 1938, in addressing the prospects of a constitutional amendment providing presidential line-item veto power, President Franklin D. Roosevelt proposed that the same result (as a constitutional amendment) could be achieved by incorporating in appropriations bills a provision allowing for a "legislative veto" of Executive actions within a given number of days. The House adopted the Roosevelt language as an amendment to the Independent Offices Appropriations Act; 1939, thereby authorizing the President "to eliminate or reduce by Executive order, in whole or in part, any appropriation or appropriations made by [that] act, . . . whenever . . . he shall find and declare that such action will aid in balancing the budget or in reducing the public debt, and that the public interest will be served thereby . . ." The language also provided that such

of 60 calendar days during which, presumably, Congress could act either to provide an earlier effective date or disapprove the President's action. The proposal failed in the Senate.

In 1949, the Hoover Commission implicitly called for item veto authority in its Recommendation No. 4, "Reduction of Appropriations", where it advocated the "right of Bureau of the Budget and President to reduce appropriated amounts during the year for which they were provided . . ."

More recently, the spate of impoundments exercised by President Nixon gave rise to enactment of the Impoundment Control Act of 1974, a measure affording the President the power of rescission and deferral. That legislation contains a modified form of line-item veto insofar as it permits the President to sign an entire appropriation bill and later express disagreement with some portion of it by temporarily or permanently withholding designated funds from availability for obligation and expenditure.

IV. EXPERIENCE IN THE STATES

At present 43 States permit item vetoes in appropriation bills. Six States authorize general vetoes of bills but do not authorize item vetoes (Indiana, Maine, Nevada, New Hampshire, Rhode Island, and Vermont). One State, North Carolina, does not allow its Governor to veto any legislative bills.

Following the Civil War, many States revised their constitutions to respond to the practice of adding legislative riders to appropriation measures and to give their Governors more power to fulfill State constitutional mandates that the State's budget be in balance. While most States amended their constitutions to include line-item veto power for the chief executive, the schemes adopted in the several States vary widely.

In Illinois, the Governor has reduction veto power on a particular line item. The amount he approves becomes law unless his veto is overridden by the legislature. In Alabama, the Governor may veto a major budget bill entirely or offer executive amendments, which may delete or add figures and language. In Indiana, a court suit has held that the Governor, in vetoing items, must veto a complete section and only in an appropriation bill.

The State mechanisms also differ with respect to legislative language accompanying appropriations. Among the most permissive is that of Wisconsin, where substantive program language contained in the budget bill can be item vetoed apart from appropriation figures. In Michigan, where the Governor may veto distinct items of appropriations, the rule has been that when a line item is vetoed, the language accompanying that line item is also vetoed. In Colorado, under a more restrictive approach, the Governor can veto accompanying language only if it is unconstitutional. Illinois avoids the issue insofar as its State constitution prohibits substantive language in an appropriations bill.

State constitutional provisions also differ widely with regard to the manner in which executive vetoes may be overridden by the legislature. The votes required in each House to pass appropriations and revenue bills or items over the Governor's veto include: Majority elected (Arkansas), three-fifths elected (Maryland), two-thirds present (Texas), two-thirds elected (Mississippi), three-quarters elected (Alaska).

The power of line-item veto in the States has given rise to significant political strife which has, at times, threatened the shutdown of Government services and withholding of payments. In California, the line-item veto presents a perennial problem with the legislature holding back appropriations bills until a deal is struck with the Governor on use of his line-item veto power. California law provides that the State budget is to be signed into law by July 1 of each year. In 1983, the legislature refused to send the Governor the budget along with a trailer bill, upon which the budget was contin-

...with the Governor agreed to sign both measures. The Governor had proposed a budget of \$22 billion while the legislature passed a budget of closer to \$23 billion. The result of the political logjam was that the State budget was not signed into law until July 19, 1983. A Federal court compelled California to mail 346,615 State welfare and salary checks during the hiatus even though the State was without a budget and the Governor without the authority to spend after June 30, 1983.

Similarly, in Pennsylvania the Governor faced the choice of using his line-item veto to balance the budget sent to him, cutting out \$1 for every \$8 in the budget, or vetoing the entire measure and continuing the stalemate with the legislature while State welfare and paychecks went unmailed. In exercising his line-item veto, Governor Thornburgh responded to the house, which had added spending without new revenues, by vetoing the house's appropriation for itself.

V. ARGUMENTS FOR AND AGAINST

Debate over the institution of a Presidential line-item veto has given rise to a number of arguments both favoring and opposing the concept. Those arguments are summarized below. The arguments presented in this section are not those of the House Budget Committee nor do they represent a Budget Committee evaluation of the proposal. As indicated, they are the arguments which supporters are making on behalf of the bill and which opponents are making against it. The Budget Committee staff attempts to summarize the arguments on both sides as cogently as possible.

Balance of powers: For

It would restore the veto power to the President. The line-item veto would reestablish the constitutionally provided system of checks and balances. Appropriation bills almost invariably are composed of items necessary for the public welfare as well as items not necessarily in the public interest. At present, the President has no choice but to approve all or disapprove all, thus risking delay or discontinuance of necessary functions and work on needed projects. The existing veto power has been eroded by omnibus appropriations and late passage of bills. (See remarks of Senator Alan J. Dixon, *Washington Post*, October 19, 1983.)

Against

It would give the President legislative authority not envisioned by the Constitution. The veto power is legislative in nature. It is inappropriate for the President to substitute his judgment for that of the legislature. Such a move would mix the powers of executive and legislative departments in a way that was never intended by the framers of the Constitution. (See remarks of Representative Barber Conable, *Wall Street Journal*, January 5, 1984.)

The device would violate the principle of separation of powers embodied in the Constitution. The item veto would practically destroy the only power Congress now has over the President other than impeachment. The power of coercion would be removed by this device thus making the legislature subservient to the will of the Executive. (See remarks of Representative Silvio Conte, *New York Times*, January 4, 1984.)

It would defeat the legislative intent of Congress. In exercising his line-item veto, the President would be proposing to give an independent appropriation to individual objects, a proposal upon which the will of Congress has never been expressed. The President would thereby originate an appropriation, not suggested by Congress, and make it law, if more than one-third of either House agrees with him, thus eroding the principle of majority rule. Congress would be forbidden to make dependent appropriations.

appropriations bills. Each of these measures represents a statement of policy—the provisions taken as a whole representing the congressional will for the coordinated operation and management of a program based on a broad theme. To afford the President power of a line-item veto would be to allow the Executive to thwart the congressional will in legislating public policy.

Reducing deficits: For

It would help to reduce deficits. The item veto power would bring the President into the budget process to a greater degree to help reduce deficits without undermining the congressional power of the purse. (See remarks of Representative Jack Kemp, Dear Colleague of September 19, 1983.)

Against

Item veto power would not lead to a major and timely reduction in the deficit. Two major causes of high deficits, defense spending growth and certain taxes, are often supported by the Executive and would not be addressed under the power. The vehicle could only be used to control discretionary spending—a relatively small portion of the Federal budget.

The proposal is a political move rather than a substantive approach to deal with Federal deficits. The item veto cannot reach the enormous sums provided for entitlement programs and most proposals are silent on the subject of addressing tax expenditures. (See remarks of Senator Mark Hatfield, *Congressional Record*, October 7, 1983. Also see I.)

Even if the item veto power were used to address the Federal deficit, adoption of a constitutional amendment would take several years. Record deficits choking off this Nation's economy are today's problem.

The President already has the tools to cut spending in individual line items. The Congressional Budget and Impoundment Control Act of 1974 granted power to the President to propose rescissions and deferrals of budget authority. In his first 2 years in office, Congress allowed more than 75 percent of President Reagan's rescission requests under that authority, resulting in more than \$20 billion in lower appropriated spending in fiscal years 1981 and 1982.

Congressional timetable: For

It would force early congressional consideration of appropriations. Veto of an entire bill near the end of a session necessitates prolongation of the session as, in the absence of a veto override, a new bill must pass the House and the Senate and go to conference prior to final enactment. The item veto power would expedite completion of the legislative program so that specific vetoed items could be reconsidered prior to the beginning of the fiscal year.

Against

It would delay the timely consideration of appropriations. As has been the case in a number of States, the legislature would be reluc-

tant to send appropriations measures to the President prior to extensive negotiation on his use of the line-item veto. The Appropriations Committees would hold back all of their bills until agreement could be reached on a myriad of details. If compromise is not arrived at, the real threat would be a shutdown of Government services on a broad scale.

Addressing omnibus appropriations: For

It would work to curb the effectiveness of logrolling and discourage pork-barrel appropriations and would reduce extravagance in public expenditures. The item veto would allow the President to focus attention on items he believes to be wasteful, inappropriate, or unwise without holding hostage portions of appropriations to which he does not object. (See remarks of Senator Alan J. Dixon, *New York Times*, January 4, 1984.)

Against

It would lessen the responsibility of Congress. The item veto would allow one branch of Government to pass the buck to the other. Members of Congress could put all of their pet projects in a bill, letting the President take the heat for vetoing fiscally irresponsible yet district-pleasing projects. As President Taft said, in 1916, "It is wiser to leave the remedy . . . to the action of the people in condemning at the polls the party which becomes responsible for such riders than to give, in such a powerful instrument, a temptation to its sinister use by a President eager for continued political success."

Power of persuasion: For

It would provide a useful tool of persuasion to the President. The item veto threat would be effective in persuading Congress to modify legislation before presenting it to the President for signature.

Against

In recent years the President has become so closely in touch with legislation as it progresses through each House that he can make his opposition to particular items or provisions known before the bill is presented to him for signature. By personal consultation with party leaders, by his use of liaison officers, by his supervision over the budget, by special messages to Congress, or even by radio and television appeals to the people, the President can exercise influence over details in appropriations. (See II.)

The experience of the States in use of the line-item veto: For

Governors and State legislators alike have called exercise of the item veto favorable in completing budgetary policy in their States. They claim the device has been used with wise judgment and discretion to check unnecessary or unsound expenditures, to delete legislative riders, and to prevent pork-barrel appropriations.

While the item veto was adopted by many States as a corrective measure for the mistakes of legislatures which met irregularly and had little knowledge about programs, Congress meets constantly and, based on the responsibility given it in Article I of the Constitution, makes the major decisions about the expenditures of public funds.

Furthermore, some Governors have privately questioned the effectiveness of their own line-item veto power. (See IV.)

Other arguments: For

Unwise action by the President would be combatted. Congress would almost certainly override unwise action by the President vetoing a recognizedly vital project or function.

Against

It would be an uncertain grant of power. The language of the usual amendments designed to confer on the President the power to veto items or provisions in appropriation bills has been given varying interpretations in the several States. The Pennsylvania Supreme Court has construed the expression "to disapprove any item" to include the right "to reduce any item." Were the U.S. Supreme Court to interpret similar language the same way, the President could modify legislative appropriations almost at will; he could delete some items; he could reduce others; he could approve the remainder. This would, in effect, shift control of the purse strings of the Government from Congress to the Executive.

○

LTAB:

This is some
background for
meeting on subject.

JK

THE WHITE HOUSE
WASHINGTON

January 20, 1984

MEMORANDUM FOR JIM BAKER

FROM: M.B. Oglesby
SUBJECT: Telephone Access Charge Legislation

BACKGROUND

At a meeting on Thursday, January 19, 1984, the FCC proposed to modify its telephone access charge order to accommodate the four points made in a letter by Senator Dole and 31 of his Senate colleagues. The key change was the postponement of the access charge for residential users from April 1, 1984 to July 1, 1985.

Despite the FCC's decision, Senator Packwood has stated that he intends to pursue S. 1660 when the Senate returns on Monday, January 23. Senator Baker's commitment to Packwood to move to proceed to S. 1660 on Monday remains operative. There is no commitment to pursue S. 1660 to passage, but rather to "see what happens."

In light of Packwood's expressed intent, passage of some legislation by the Senate remains a possibility. It is important for Senator Baker to know how strongly opposed the White House is to having a bill passed on this issue and sent to the President. Alternative strategies exist which the Senate might pursue in order to avoid passage of any substantive legislation relative to access charges.

First, the several Senate Republican Committee chairmen who joined Dole in sending the letter to the FCC might impress upon Packwood their interest in not bringing up this legislation. Several senators believe it is important to be on record in this matter. One possibility is passage of a Senate resolution which would not be eligible to go to conference with the House. Should Packwood decide not to pursue S. 1660, he could be the sponsor of such a Senate resolution thereby giving him an out politically. (Such a resolution probably would restate the reason for the Senate's interest in the access charge issue and commend the FCC for taking action to postpone the effective date of access charges and for continuing to study their impact on consumers.)

Strom is all fired up because of a former aide who now works for Gen. Tel who ^{is} not on board w/ Dole solution.

Packwood should just declare victory! No access charge now independent!
Dole should filibuster.
Win for now politically to fight this legislation.

Compromise:
Give Cong. a chance to review FCC action - (i.e. delay for 6 mos.)
Would have then a campaign to stop access charge.
Prob. w/ this is w/d then go to Cong w/ House & get a 2 or 3 yr delay bill + Pres. would have to veto.

Second, should Packwood insist on pursuing S. 1660, the Administration, as well as the operating companies and the telephone users group should mobilize to obtain enough votes to table S. 1660. Such a tabling motion would be made with the understanding that a Senate resolution (see above) would be offered immediately following the tabling motion. This, obviously, is a riskier strategy but one which we might need to pursue in order to prevent a bill from going to conference.

SUGGESTED TALKING POINTS

1. Howard, I understand that you intend to move to proceed to S. 1660 when the Senate reconvenes on Monday. As you know, the Administration has announced its opposition to this or any other legislation on the access charge matter.
2. It is extremely important that legislation not be sent to the President on this matter. It is a highly charged political issue in an election year.
3. Clearly, the momentum is running against S. 1660. The FCC's tentative decision of Thursday and the effort organized by Bob Dole reflect that momentum.
4. Howard, I suspect there are a variety of ways out of this. I am hopeful that you and your colleagues might persuade Senator Packwood not to insist on pursuing S. 1660. If he does insist upon proceeding, an alternative strategy might be to garner the votes to table the bill. We would work diligently towards that end. I understand, however, that a number of Senators would like to be recorded in some fashion on this matter. Perhaps a Senate resolution would be the right kind of vehicle on which to have a vote.
5. I cannot impress upon you enough, Howard, the need not to have a bill presented to the President on this issue.



STATEMENT OF ADMINISTRATION POLICY

November 3, 1983
(House Rules)

H.R. 4102 - Universal Telephone Service Preservation Act of 1983
(Wirth (D) Colorado and 31 others)

The Administration strongly opposes enactment of H.R. 4102 and believes that the bill would be a major step backwards for consumers. H.R. 4102 would encourage retention of inefficient cross-subsidies, would delay introduction of new equipment and services, and would inhibit competition in the telecommunications marketplace.

* * * * *

(Not to be Distributed Outside Executive Office of the President)

A copy of the Committee report on H.R. 4102 is not yet available for review. FCC (Lee, Legislative Affairs) advises, however, that as reported by the House Committee on Energy and Commerce, H.R. 4102:

- o Prohibits the FCC from levying a flat long-distance "access charge" on monthly residential or single-line business telephone bills;
- o Establishes a "Universal Service Fund" to provide subsidies to local exchanges with costs above the national average (primarily rural areas), to be administered by a "Universal Service Board" comprised of State and Federal regulators;
- o Returns the responsibility for determining equipment depreciation rates to the State public utility commissions;
- o Levies a new tax on telecommunications systems that bypass the local telephone company;
- o Freezes the current discount in payments to local telephone companies by AT&T's competitors (e.g., MCI and Sprint) at least until they receive fully equal interconnection;
- o Requires each State to establish rules for the provision of a basic ("lifeline") telephone service;
- o Authorizes the FCC to establish a program of public participation funding (including attorney's fees) for persons not otherwise able to take part in common carrier proceedings before the FCC;
- o Authorizes the creation in each State of a nonprofit association of residential telephone consumers "to ensure effective and democratic representation . . . in the implementation of H.R. 4102;" and

o Establishes a "National Consumer Telephone Resource Center" to represent the interests of the State associations in Federal policymaking.

This draft of a position was developed by LRD in consultation with Demuth and the Commerce Department (Levitt, Legislative Counsel) and the Justice Department (Logan, Legislative Affairs). The Administration has not yet stated a position on the matter. The Cabinet Council on Commerce and Trade considered this matter at a recent meeting but did not make a decision.

LRD DRAFT
11/3/83

TALKING POINTS

H.R. 4102--UNIVERSAL TELEPHONE SERVICE ACT OF 1983

I. H.R. 4102 would perpetuate and expand the current massive subsidy of local telephone companies by long distance callers.

- * At present, interstate long distance callers pay a share of local telephone companies' fixed costs (non-traffic-sensitive or NTS costs) equal to 3.3 times their share of usage. For example, if 15% of the minutes of calling are interstate long distance, then 50% of local NTS costs are recovered from long distance rates.
- * FCC's access charge plan, to take effect April 3, will reduce this unfair cross subsidy by recovering part of local phone companies' NTS costs from a new flat monthly charge on telephone lines (end user charge) rather than long distance rates. The end user charge will be \$2 monthly for residential phone lines in 1984, and up to \$6 monthly for business phone lines.
- * H.R. 4102 would overturn FCC's access charge plan, forbid end user charges for residential users and business users with only one phone line, and create new cross subsidies from long distance callers to local phone companies on top of existing subsidies.

II. H.R. 4102 is unnecessary. FCC's access charge plan will not lead to unreasonable rate increases.

- * Local telephone companies' recent rate increase requests will raise the amount they collect from ratepayers less than 8%. This is because 20% of the increase requests are merely accounting changes, and State regulators will probably grant less than 50% of the remainder. State regulators have historically held the line on local residential rate increases.
- * The new end user charge will be offset by lower long distance rates. AT&T will reduce long distance rates more than 10%, and MCI has announced that it will reduce its rates also, if the FCC plan takes effect.

- * FCC has already agreed to a new subsidy for lifeline telephone service for low income persons. FCC will waive the \$2 monthly charge for any subscriber to a State-approved lifeline service.
- * The plan developed by FCC's Federal/State Joint Board will protect high cost local phone companies. It provides a "high cost factor" subsidy that will prevent any local phone company from having to pay more than 156% of national average non-traffic-sensitive (NTS) costs per subscriber.
- * FCC is presently considering petitions to reexamine the difference between access charges paid by AT&T and by its long distance competitors, to assure fair competition.

III. H.R. 4102 would add more than \$5 billion annually to long distance telephone bills.

- * By cancelling FCC's planned access charges for residential and single line business users, H.R. 4102 would shift more than \$3 billion annually back onto long distance bills.
- * H.R. 4102 creates a new subsidy for "high cost" local phone companies, on top of the existing subsidy. The new subsidy would add about \$500 million annually to long distance bills, and more in future years. The bill would subsidize phone companies whose high costs are due to booming economies and rapid growth, as well as phone companies in rural areas.
- * H.R. 4102 creates another new subsidy for lifeline service for low income persons, on top of the FCC's waiver of the two dollar monthly fee. This new subsidy would add about \$1.5 billion annually to long distance bills, and more in future years.

IV. Artificially high long distance rates from H.R. 4102 would be unfair and would damage the economy.

- * Residential users generate more than 46% of the interstate calling (MTS/WATS) revenue, so they have a big stake in long distance rates.
- * Overpricing long distance service will hurt U.S. productivity and competitiveness

increasingly as information becomes a more important input to all areas of industry and commerce.

- * Overpriced long distance will encourage large users to build their own systems that bypass the public telephone system to avoid paying the subsidy, even when this results in wasteful duplication of facilities.

V. H.R. 4102's bypass tax would retard innovation and impose huge administrative and litigative costs.

- * H.R. 4102 would impose a charge on communications systems that bypass the local phone company. The bypasser would receive no benefit in exchange for this payment, so it is actually a tax.
- * The FCC and the courts would be flooded with wasteful litigation aimed at determining what communications services are or are not taxable under H.R. 4102. For example, services offered by cable television systems, and even by radio broadcasters, could arguably be taxed as "bypass" under this bill.
- * Innovative new communications services would be delayed while lawyers argued over whether and how much they should be taxed as "bypass".



STATEMENT OF ADMINISTRATION POLICY

January 6, 1984
(Senate)

S. 1660 - Universal Telephone Service Preservation Act of 1983
(Packwood (R) Oregon and 32 others)

The Administration is strongly opposed to enactment of S. 1660 and believes that the bill would be a major step backwards for consumers. S. 1660 would encourage retention of inefficient cross-subsidies, would restrict introduction of new equipment and services, and would inhibit competition and retard productivity and employment growth in the telecommunications marketplace.

The telecommunications sector is experiencing unprecedented technological change and is just beginning a complex structural transition. The Administration believes the Congress should refrain from enacting new and uncertain policy changes during this critical period.

* * * * *

(Not to be Distributed Outside Executive Office of the President)

As reported by the Senate Committee on Commerce, Science, and Transportation, the key provisions of S. 1660:

- o Prohibit the FCC from levying a flat end-user "access charge" on monthly residential or single-line business telephone bills during the period ending December 31, 1985;
- o Establish a "Universal Service Joint Board," comprised of State and Federal regulators, to administer a new "Universal Service Fund," which would be used to (1) provide subsidies to local telephone companies with costs above the national average (primarily those in rural areas) and (2) subsidize "lifeline" service (i.e., limited telephone service for select groups of subscribers, such as the elderly or unemployed);
- o Levy a new tax on telecommunications systems that bypass the local telephone company; and
- o Require the FCC to report to the Congress by March 1, 1985, on (1) the manner in which the amendments made by S. 1660 have been administered, (2) any proposed action with respect to access charges and universal telephone service, and (3) any legislation that the FCC considers appropriate.

S. 1660 is similar in purpose to H.R. 4102, which the Administration opposes, and which passed the House on November

10, 1983; however, S. 1660 is more limited in scope and does not contain certain objectionable features of the House-passed legislation (e.g, concerning public participation funding and the establishment of a "National Consumer Telephone Resource Center," that would represent the interests of the States in Federal telephone decisionmaking).

This draft of a position was developed by LRD in consultation with OIRA (DeMuth/Reed) and JTP (Curtis).

THE WHITE HOUSE
WASHINGTON

January 18, 1984

MEMORANDUM FOR JIM BAKER

FROM: NANCY RISQUE *NR*

SUBJECT: Format for Bipartisan Leadership Meeting
on January 25

Jim, we've now got the time on January 25 for a bipartisan leadership meeting. Unless you have any other thoughts, B has suggested that the meeting be started with an update on Lebanon, then take the opportunity to discuss Central America, and finish up with a kickoff of the second session.

OK

Told NR

1/18

THE WHITE HOUSE
WASHINGTON

January 18, 1984

MEMORANDUM FOR JIM BAKER

FROM: NANCY RISQUE
PAM TURNER
DENNIS THOMAS

NSC can and
will do.
Just ask

Letter to Hill on Soviet Compliance

We strongly recommend that a fact sheet be prepared that outlines the main theme(s) and issues in the letter. We also suggest that we get it to our friends before public release of the letter so that they may understand what the violations are and are prepared to support us.

Budget briefings on the Hill

We understand that there is thought being given to not having Stockman/Regan/Feldstein briefings for the GOP money committee members, the Republican Conference, or expanded bipartisan leadership...

We believe that not to do such briefings would be a mistake. We've done it every year. The members want the attention. If we don't take the lead in selling our budget, who will?

Should do -
But get lines
straight first.

1/18
Told NR
by Ted