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**Collection:** Roberts, John G.: Files  
**Folder Title:** JGR/Line-Item Veto  
(2 of 2)  
**Box:** 32

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# WITHDRAWAL SHEET

## Ronald Reagan Library

Collection: :Roberts, John G.: Files

Archivist: mjd/bcb

File Folder: JGR/Line Item Veto (2)

OA 12664

Date: 4/13/98

*12660*

| DOCUMENT NO. AND TYPE | SUBJECT/TITLE   | DATE                                     | RESTRICTION                         |
|-----------------------|---|--|-------------------------------------|
| 1. memo               | Fred Fielding to Michael Deaver, Richard Darman, Bently Elliot re Support for Line Item Veto Authority in State of the Union Address, 2p. | 1/23/84                                  | <del>P5</del>                       |
| <del>memo</del>       | <del>Same as item 1, 2p</del>   | <del>1/23/84</del>                       | <del>P5</del>                       |
| 2. memo               | John Roberts to Fred Fielding (annotated) re Line Item Veto, 1p.  | 1/18/84                                  | <del>P5</del>                       |
| 3. memo               | John Roberts to Fred Fielding re Line Item Veto, 1p.  | 1/18/84                                  | <del>P5</del>                       |
| 4. memo               | Fred Fielding to M.B. Oglesby re Inquiry From Assistant Attorney General Robert McConnell on Line-Item Veto Issue, 1p.                    | 6/15/84                                  | <del>P5</del>                       |
| 5. memo               | John Roberts to Fred Fielding re Inquiry From Assistant Attorney General Robert McConnell on Line-Item Veto Issue, 2p.                    | 6/14/84                                  | <del>P5</del>                       |
| 6. memo               | Same as Item # 4, 1p.   | 6/15/84                                  | <del>P5</del>                       |
| 7. memo               | <del>Earlier version of</del><br><del>Same as</del> Item # 4, 1p.   | <del>6/14/84</del><br><del>6/15/84</del> | <del>P5</del>                       |
| 8. memo               | Robert McConnell to Fred Fielding re Line Item Veto, 2p.  | 6/11/84                                  | <del>P5</del><br><i>CS 12/14/00</i> |

### 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].

WHITE HOUSE OFFICE OF RECORDS MANAGEMENT: Subject File

FILE TRANSFER  
BY THE REAGAN LIBRARY STAFF

Previously filed: 56R/Line-Item Veto (2) OA12664  
Roberts, John B. Sr.: Files

New file location: FE 002-01 217017CU

Date of transfer: 4/7/98 MSB



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

Honorable Mack Mattingly  
United States Senate  
Washington, D. C. 20510

Dear Mack:

I am writing to express strong Administration support for your proposal, co-sponsored by Dan Evans, to give the President two year statutory veto authority by providing that each item in an appropriations measure would be enrolled as a separate bill for purposes of presentment to the President.

The Administration believes that establishment of an effective statutory item veto authority would be very much in the public interest. Your proposal would create an important tool by which the President could eliminate ill-advised and wasteful appropriations from the budget. This mechanism could play a measurable role in efforts to reduce unnecessary federal spending.

As you will also appreciate from your prior efforts in this area, it is important that Congress continue to work on permanent confirmation of this power through passage of an Item Veto Amendment. Several versions of an Item Veto Amendment have been introduced by you and Senator Dixon and by Representatives Kemp, Hyde and Bereuter, among others. The Administration hopes that Congress will consider these proposals expeditiously, so that the item veto authority can be permanently established in our system of government, and will not lapse or become subject to dilution or elimination by subsequent legislation.

Subject to certain technical modifications of the original draft bill, and elimination of a section raising problems under the Supreme Court's decision in INS v. Chadha, which our staffs have fully resolved, the Administration considers your proposal a significant step forward in the control of federal spending, and strongly supports its enactment into law.

Sincerely,

David A. Stockman  
Director



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

Honorable Dan Evans  
United States Senate  
Washington, D. C. 20510

Dear Dan:

I am writing to express strong Administration support for your proposal, co-sponsored by Mack Mattingly, to give the President two year statutory veto authority by providing that each item in an appropriations measure would be enrolled as a separate bill for purposes of presentment to the President.

The Administration believes that establishment of an effective statutory item veto authority would be very much in the public interest. Your proposal would create an important tool by which the President could eliminate ill-advised and wasteful appropriations from the budget. This mechanism could play a measurable role in efforts to reduce unnecessary federal spending.

As you will also appreciate from your prior efforts in this area, it is important that Congress continue to work on permanent confirmation of this power through passage of an Item Veto Amendment. Several versions of an Item Veto Amendment have been introduced by Senators Mattingly and Dixon and by Representatives Kemp, Hyde and Bereuter, among others. The Administration hopes that Congress will consider these proposals expeditiously, so that the item veto authority can be permanently established in our system of government, and will not lapse or become subject to dilution or elimination by subsequent legislation.

Subject to certain technical modifications of the original draft bill, and elimination of a section raising problems under the Supreme Court's decision in INS v. Chadha, which our staffs have fully resolved, the Administration considers your proposal a significant step forward in the control of federal spending, and strongly supports its enactment into law.

Sincerely,

David A. Stockman  
Director

to provide that each item of any general or special appropriation bill, any bill or joint resolution making supplemental, deficiency, or continuing appropriations, and any conference report thereon that is enacted or adopted by the Congress shall be enrolled as a separate bill or joint resolution for presentation to the President.

IN THE SENATE OF THE UNITED STATES--98th Cong., 2d Sess.

H.R. \_\_\_\_\_

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-----  
Referred to the Committee on \_\_\_\_\_ and  
ordered to be printed

Ordered to lie on the table and to be printed

Amendment intended to be proposed by Mr. Mattingly (for himself  
and Mr. Evans)

Viz:

1 At the appropriate place in the bill, insert the  
2 following new section:

3 SEPARATE ENROLLMENT OF ITEMS IN CERTAIN BILLS AND JOINT  
4 RESOLUTIONS MAKING APPROPRIATIONS

5 Sec. . (a) (1) Notwithstanding any other provision of  
6 law, any rule of the House of Representatives, any standing  
7 rule of the Senate, any concurrent resolution, or any  
8 resolution of the House of Representatives or the Senate,  
9 when any general or special appropriation bill, any bill or  
10 joint resolution making supplemental, deficiency, or  
11 continuing appropriations, ~~or any conference report thereon~~  
12 has passed both Houses of the Congress in the same form, the  
13 enrolling clerk of the House in which the bill or joint  
14 resolution originated shall enroll each item of such bill or  
15 joint resolution as a separate bill or joint resolution, as  
16 the case may be.

17 (2) A bill or joint resolution enrolled pursuant to  
18 paragraph (1)--

19 (A) shall be enrolled without substantive revision,

20 (B) shall conform to section 103 or 172, as the case

of title 1, United States Code (as such section is in effect on the date of the enactment of this section), and

(C) shall bear the designation of the measure described in paragraph (1) of which it was an item prior to such enrollment, together with such other designation as may be necessary to distinguish such bill or joint resolution from other bills or joint resolutions enrolled pursuant to paragraph (1) with respect to the same measure.

(b) A bill or joint resolution enrolled pursuant to paragraph (1) of subsection (a) with respect to an item shall be deemed to be ~~an Act or joint resolution of the Congress~~ and shall be signed by the presiding officers of both Houses and presented to the President for his signature (and otherwise treated for all purposes) in the manner provided ~~for Acts and joint resolutions generally~~. The vote by which House of the Congress agreed to the measure of which such bill or joint resolution was an item prior to such enrollment shall be deemed to have been the vote of such House on such Act or joint resolution.

a bill under Article I, section 7, clauses 2 and 3 of the Constitution

approval or disapproval

in Article I, section 7, clauses 2 and 3 of the Constitution.

(c) For purposes of this section, the term "item" means any numbered section and any unnumbered paragraph of any general or special appropriation bill, any bill or joint resolution making supplemental, deficiency, or continuing appropriations ~~and any conference report on any such bill or joint resolution~~

~~(d) The provisions of this section are enacted by the Congress--~~

~~(1) is an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they shall be considered as part of the rules of each House, respectively, or of that House to which they specifically apply, and such rules shall supersede~~

~~to the extent that they are inconsistent  
with the provisions of this section.~~

(2) ~~with full recognition of the constitutional right  
of either House to change such rules (so far as relating  
to such House) at any time, in the same manner, and to  
the same extent as in the case of any other rule of such  
House.~~

(3) The provisions of this section shall apply to bills,  
joint resolutions, ~~and conference reports~~ enacted or adopted  
by the Congress during the two-year period beginning with the  
date of the enactment of this section.





EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

September 20, 1984

MEMORANDUM FOR: John Roberts  
FROM: John Cooney  
SUBJECT: Item Veto Statute

Attached is a draft letter on the item veto statute proposed by Senators Mattingly and Evans. It attempts to resolve the Chadha question we discussed earlier today.

This version does not address your second concern, about the lack of coverage of the section which defines the "item" subject to separate enrollment and veto. I have asked our budget people to review this issue, but I have not yet heard from them.

Please let me know if you have any comments on the Chadha aspects.

Honorable Mack Mattingly  
United States Senate  
Washington, D.C. 20510

Dear Mack:

I am writing concerning your proposal to provide the President with line-item veto authority by virtue of a statute which would provide that, for a two-year period, each item in an appropriations measure would be enrolled as a separate bill for purposes of presentment to the President. The Administration supports the general principles underlying the proposal. One part of the proposal, however, violates the constitutional prohibition against legislative veto devices. We would be happy to work with you to devise a technical amendment to resolve this problem.

The Administration believes that creation of an effective statutory item veto authority would be very much in the public interest, and we believe your proposal is a promising step in that direction. Subsection (d), however, provides that the measure would be enacted as an exercise of the rulemaking power of Congress and would be subject to revision in the same manner as other rules. This provision is unconstitutional under the Supreme Court's decision in INS v. Chadha, which held that legislative actions purporting to revise the Executive's

substantive authority may constitutionally be undertaken only pursuant to bills or resolutions that are presented to the President for his approval. Since revisions of Congressional rules are not so presented, this subsection is defective under Chadha. In order for the proposal to be constitutional, subsection (d) therefore must be deleted or revised to reflect that this action is taken pursuant to Congress' statutory amendment.

As thus modified, your proposal would create an important tool by which the President could eliminate ill-advised and wasteful appropriations from the budget. This mechanism would play a measurable role in efforts to reduce unnecessary federal spending.

As you will appreciate from your prior efforts in this area, it is important that Congress continue to work on permanent confirmation of this power through passage of an Item Veto constitutional amendment. Several versions of an Item Veto Amendment have been submitted by you and Senator Dixon and by Representatives Kemp, Hyde and Bereuter, among others. The Administration hopes that Congress will consider those proposals expeditiously, so that the item veto authority can be permanently established in our system of government, and does not lapse or become subject to dilution or elimination by subsequent legislation.

I wish again, however, to emphasize that, subject to correction of the Chadha problem, the Administration considers your proposal a significant step forward in the control of federal spending and believes it would provide a useful mechanism for reducing wasteful spending during the interim period while Congressional deliberations on an Item Veto Amendment are ongoing and while the proposed Amendment is pending before the States for ratification.

Sincerely,

David A. Stockman

Director

Honorable Mack Mattingly  
United States Senate  
Washington, D.C. 20510

Dear Mack:

I am writing concerning your proposal to provide the President with item veto authority by virtue of a statute which would provide that, for a two year period, each item in an appropriations measure would be enrolled as a separate bill for purposes of presentment to the President. The Administration strongly supports the proposal, subject to an understanding which I understand that our staffs have reached.

The Administration believes that creation of an effective statutory item veto authority would be very much in the public interest. Your proposal would create an important tool by which the President could eliminate ill-advised and wastefully appropriations from the budget. This mechanism could play a measurable role in efforts to reduce unnecessary federal spending.

In reviewing the proposal, we were concerned that the original subsection (d) was defective under the Supreme Court's decision in INS v. Chadha, because it created an unconstitutional legislative veto device. It is my understanding that, in discussions between our staffs, it has been agreed that this provision will be eliminated from the proposal as finally introduced.

As you will also appreciate from your prior efforts in this area, it is important that Congress continue to work on permanent confirmation of this power through passage of an Item Veto Amendment. Several versions of an Item Veto Amendment have been introduced by you and Senator Dixon and by Representatives Kemp, Hyde and Bereuter, among others. The Administration hopes that Congress will consider these proposals expeditiously, so that the item veto authority can be permanently established in our system of government, and will not lapse or become subject to dilution or elimination by subsequent legislation.

I wish again to emphasize that, subject to correction of the Chadha problem discussed above, the Administration considers your proposal a significant step forward in the control of federal spending and believes it would provide a useful mechanism for reducing wasteful spending during the interim period while Congressional deliberations on an Item Veto Amendment are ongoing and while the proposed Amendment is pending before the States for ratification.

Sincerely,

David A. Stockman


Director

THE WHITE HOUSE

WASHINGTON

January 23, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 

SUBJECT: Support for Line Item Veto Authority  
in State of the Union Address

As you requested, a memorandum to Deaver and Darman on the easiest, constitutionally sound way of obtaining effective line item veto authority is attached. This is consistent with the views of the Department of Justice. In light of the imminence of the State of the Union address, I have added Elliott to the list of addressees. I have also attached a revised memorandum for Greg Jones of OMB for your signature, advising Jones that Justice's proposed report on S. 1921 and S.J. Res. 178 be held until after the State of the Union address.

Attachment

THE WHITE HOUSE

WASHINGTON

January 23, 1984

MEMORANDUM FOR GREGORY JONES  
LEGISLATIVE ATTORNEY  
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING Orig. signed by FFF  
COUNSEL TO THE PRESIDENT

SUBJECT: Line-Item Veto

Counsel's Office has reviewed the proposed Justice Department report on S.J. Res. 178 and S. 1921. We agree that the report should not be cleared at this point. The report should be returned to Justice for final revision in light of the final text of the State of the Union address.

FFF:JGR:aea 1/23/84  
cc: FFFielding/JGRoberts/Subj/Chron



THE WHITE HOUSE

WASHINGTON

January 23, 1984

MEMORANDUM FOR MICHAEL K. DEEVER  
ASSISTANT TO THE PRESIDENT  
DEPUTY CHIEF OF STAFF

RICHARD G. DARMAN  
ASSISTANT TO THE PRESIDENT  
DEPUTY TO THE CHIEF OF STAFF

BENTLY ELLIOTT  
DEPUTY ASSISTANT TO THE PRESIDENT  
DIRECTOR, PRESIDENTIAL SPEECHWRITING OFFICE

FROM: FRED F. FIELDING *Orig. signed by FFF*  
COUNSEL TO THE PRESIDENT

SUBJECT: Support for Line Item Veto Authority in State  
of the Union Address

The contemplated support for line item veto authority in the State of the Union address raises the issue of the appropriate vehicle for obtaining such authority. The Department of Justice has concluded, and I agree, that a bill purporting to give the President the authority to veto individual items of appropriation in an appropriations bill would be unconstitutional. Such a statute would contravene the Veto Clause of the Constitution, Art. I, § 7, cl. 2, which gives the President authority to approve or veto bills, not parts thereof.

A constitutional amendment authorizing the President to veto individual items of appropriation would avoid this concern, but an amendment requires a two-thirds vote of both houses and ratification by three-fourths of the States. Such overwhelming support in Congress for an amendment strengthening the powers of the Executive Branch at the expense of Congress seems highly unlikely.

There is a third alternative approach that in essence gives the President line item veto authority, but can be accomplished in statutory form without running afoul of the Constitution. Congress could enact a statute giving the President the authority not to expend any item of appropriations. A decision by the President pursuant to such a statute could be overridden by legislation enacted by Congress, which would in turn be subject to Presidential veto. By this means the President would have line item veto

authority, but the statute providing this authority would survive constitutional challenge because it would not purport to authorize the President directly to veto particular items of appropriation in a broader bill.

I have attached suggested language outlining this option. This language could be included in the State of the Union address if the President is going to discuss particular means of obtaining line item veto authority.

Attachment

FFF:JGR:aea 1/23/84

cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

January 23, 1984

MEMORANDUM FOR MICHAEL K. DEEVER  
ASSISTANT TO THE PRESIDENT  
DEPUTY CHIEF OF STAFF

RICHARD G. DARMAN  
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cc: FFFielding/JGRoberts/Subj/Chron

## Attachment

A constitutional amendment is not required for the President to have effective veto authority over individual budget items. A bill giving the President authority not to expend funds appropriated for particular projects, if he determines this to be in the national interest, would achieve the desired result. Congress could pass a bill requiring that the funds be spent if it disagreed with the President, and that bill would be subject to Presidential veto.

THE WHITE HOUSE  
WASHINGTON

January 23, 1984

MEMORANDUM FOR GREGORY JONES  
LEGISLATIVE ATTORNEY  
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: Line-Item Veto

Counsel's Office has reviewed the proposed Justice Department report on S.J. Res. 178 and S. 1921. We agree that the report should not be cleared at this point. The report should be returned to Justice for final revision in light of the final text of the State of the Union address.

FFF:JGR:aea 1/23/84  
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

January 18, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Line-Item Veto

OMB has asked for our views on a proposed Justice Department report on S.J. Res. 178 and S. 1921. The former is a proposed constitutional amendment giving the President the power to veto individual items of appropriation; the latter is a bill purporting to do the same. Justice's proposed report supports the concept of line-item veto authority for the President, but suggests a third alternative superior in its view to either S.J. Res. 178 or S. 1921. The proposed report concludes that S. 1921 would be unconstitutional, in light of the words of the Presentment Clause, Article I, § 7, cl. 2. That clause requires that bills -- not parts thereof -- be presented to the President for his veto or approval.

Justice indicates that it would support a Constitutional amendment, as proposed by S.J. Res. 178, but argues that the same result can be achieved through an alternative statutory approach. Justice's proposal is a statute giving the President the authority not to expend any item of appropriation. If Congress objected to any Presidential decision pursuant to such a statute, it could pass a bill requiring that the money be expended, which the President could veto. The end result would be essentially the same as with a line item veto.

In light of the plan for the President to call for line item veto authority in the State of the Union address, the Justice report should be held in abeyance. The current draft of the address does not specify the form of the desired line item veto authority, although it does state that a constitutional amendment would be "most effective." We will want to consider this language carefully when we review the circulated draft of the State of the Union address. I have alerted Ben Elliott that we may have suggestions concerning the precise form of the request for line item veto authority. For now, we should simply advise OMB to return the proposed report to Justice for revision in light of the State of the Union address.

Attachment

*As per memo to MKD & Dick DeLoach from me suggests language consistent w/ last option*

## Attachment

A constitutional amendment is not required for the President to have effective veto authority over individual budget items. A bill giving the President authority not to expend funds appropriated for particular projects, if he determines this to be in the national interest, would achieve the desired result. Congress could pass a bill requiring that the funds be spent if it disagreed with the President, and that bill would be subject to Presidential veto.



THE WHITE HOUSE

WASHINGTON

January 18, 1984

MEMORANDUM FOR GREGORY JONES  
LEGISLATIVE ATTORNEY  
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING  
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SUBJECT: Line-Item Veto

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*final text of the*

*final*

THE WHITE HOUSE

WASHINGTON

January 18, 1984

MEMORANDUM FOR FRED F. FIELDING

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THE WHITE HOUSE

WASHINGTON

January 18, 1984

MEMORANDUM FOR GREGORY JONES  
LEGISLATIVE ATTORNEY  
OFFICE OF MANAGEMENT AND BUDGET

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COUNSEL TO THE PRESIDENT

SUBJECT: Line-Item Veto

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FFF;JGR:aea 1/18/84

cc: FFFielding/JGRoberts/Subj/Chron

**WHITE HOUSE  
CORRESPONDENCE TRACKING WORKSHEET**

*LE002*

JV

- O - OUTGOING
  - H - INTERNAL
  - I - INCOMING
- Date Correspondence Received (YY/MM/DD) 1 1

*JR*

Name of Correspondent: Greg Jones

MI Mail Report User Codes: (A) \_\_\_\_\_ (B) \_\_\_\_\_ (C) \_\_\_\_\_

Subject: Requests guidance on constitutional amendment to permit line item vetoes.

**ROUTE TO:**

**ACTION**

**DISPOSITION**

| Office/Agency (Staff Name) | Action Code       | Tracking Date YY/MM/DD | Type of Response | Code     | Completion Date YY/MM/DD |
|----------------------------|-------------------|------------------------|------------------|----------|--------------------------|
| <u>CW2022</u>              | <u>ORIGINATOR</u> | <u>84,01,17</u>        |                  |          | <u>1 1</u>               |
| <u>CWAT 18</u>             | <u>D</u>          | <u>84,01,17</u>        |                  | <u>S</u> | <u>84,01,27</u>          |
|                            |                   | <u>1 1</u>             |                  |          | <u>1 1</u>               |
|                            |                   | <u>1 1</u>             |                  |          | <u>1 1</u>               |
|                            |                   | <u>1 1</u>             |                  |          | <u>1 1</u>               |

**ACTION CODES:**

- A - Appropriate Action
- C - Comment/Recommendation
- D - Draft Response
- F - Furnish Fact Sheet to be used as Enclosure
- I - Info Copy Only/No Action Necessary
- R - Direct Reply w/Copy
- S - For Signature
- X - Interim Reply

**DISPOSITION CODES:**

- A - Answered
- B - Non-Special Referral
- C - Completed
- S - Suspended

**FOR OUTGOING CORRESPONDENCE:**

- Type of Response = Initials of Signer
- Code = "A"
- Completion Date = Date of Outgoing

**Comments:**

Keep this worksheet attached to the original incoming letter.  
 Send all routing updates to Central Reference (Room 75, OEOB).  
 Always return completed correspondence record to Central Files.  
 Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET

199035

*cc*

ROUTE SLIP

|  |                       |                          |
|--|-----------------------|--------------------------|
| <i>TO</i> ✓ Fred Fielding              | Take necessary action | <input type="checkbox"/> |
| Mike Uhlmann                           | Approval or signature | <input type="checkbox"/> |
| Mike Horowitz                          | Comment               | <input type="checkbox"/> |
| Jim Jordan                             | Prepare reply         | <input type="checkbox"/> |
| Roger Greene                           | Discuss with me       | <input type="checkbox"/> |
|  | For your information  | <input type="checkbox"/> |
|  | See remarks below     | <input type="checkbox"/> |
| <i>Greg</i><br>FROM Greg Jones (x3856) | DATE                  | 1/16/84                  |

REMARKS

The attached Justice letter is pertinent to the line item veto question.

Given the President's reported endorsement of a constitutional amendment to permit line item vetoes, it would appear the Justice letter should not be cleared as drafted.

Question: If the Administration is to support such an amendment, what is the appropriate way to get "on the record?" (e.g., support an already-introduced amendment? propose our own?)

cc: Pete Modlin  
Jim Murr



U. S. Department of Justice  
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

Honorable Strom Thurmond  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, D. C. 20510

Re: Constitutional Amendment (S.J. Res. 178) and Bill  
(S. 1921) to Allow the President to Veto Items of  
Appropriation

Dear Mr. Chairman:

This responds to your request for the views of the Department of Justice on the above-referenced bill and proposed constitutional amendment, both of which would allow the President to veto items of appropriation. The Administration wholeheartedly supports the concept that the President should have the power to veto individual items of appropriation. This item veto power has long been urged by Presidents of both parties and is now essential to aid in controlling spending and keeping the federal budget under control.

As a practical matter, however, we do not believe that either the bill or the proposed constitutional amendment is the best way to accomplish this important goal. Although a constitutional amendment would be more permanent, it would involve considerable time and concerted effort to accomplish. On the other hand, the bill, as currently drafted, is inconsistent with the Constitution, which permits the President to veto only an entire bill and not individual parts thereof. Nevertheless, we feel that the same result could be obtained by a statutory provision that would grant the President power to refuse to spend all or part of a particular item of appropriation. As described more fully below, such a statute could include provisions for congressional override of the President's decision not to expend funds. We believe that such a statute would be an effective method for implementing the concept of the item veto and would avoid the need to amend the Constitution.

## I. THE NEED FOR ITEM-VETO POWER

Since the Presidency of George Washington, Presidents have recognized the need for some form of item veto. Presidents have frequently found it impossible, because of Congress's practice of aggregating many different items of appropriation into one bill, to make effective use of the constitutionally established veto power. Presidents have often found themselves in the position of having to choose between approving an entire bill or vetoing it entirely, including necessary appropriations. This Hobson's choice has seriously weakened the Presidential veto power and effectively limited the role the President can play in reviewing appropriations legislation. ✓

Because of this problem, many Presidents have urged that the Presidency be provided with power to veto severable items within a bill. The calls for an item veto became particularly strong after the Civil War. The Confederate States of America had adopted an item-veto provision in their Constitution 1/, and after the war many individual states began to adopt similar item-veto provisions for their own constitutions. During that period, Presidents Grant and Arthur asked for the adoption of a constitutional amendment that would give the President item-veto power. 2/ In this century, Presidents of both parties have urged that the President be given item-veto power. In 1938, President Roosevelt supported the item veto and argued that it "has been considered a consistent corollary of the power of the legislature to withhold approval of items in the budget of the Executive; and the system meets with general approval in the many states which have adopted it." 3/ Similarly, in 1957, President Eisenhower asked Congress to give him the power to veto individual items in appropriation bills. 4/

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1/ Constitution of the CSA, Art. I, § 7.

2/ See VII J. Richardson, Messages and Papers of the Presidents 242 (1898), VIII Id. 138.

3/ See E. Corwin, The President, Office and Powers, 1787-1957, 474 n. 55 (1957).

4/ Id. at 475. Neither President Roosevelt nor President Eisenhower indicated a preference as to how the grant of item-veto power should be accomplished. See id.; New York Times, May 25, 1957 at 1, 8.

The item veto is not a novel, untested concept that would significantly alter the structure of government. Over 40 states have provided their governors with the right to veto items of appropriation. These provisions have operated successfully in many states for over a hundred years. We believe that the President should have the same effective veto power, with the reserved legislative right to override, that is possessed by the vast majority of the nation's governors.

## II. S. 1921 - ITEM VETO BY STATUTE

S. 1921 proposes to grant item-veto power to the President by statute. Section (a) of the bill states:

The President may disapprove any item of appropriation in any Act or joint resolution, except any item of appropriation for the legislative branch or the judicial branch of the Government.

Section (b) provides that when the President signs a bill, any items of appropriation not disapproved shall become law and that the President shall return any disapproved items to the House in which the act or joint resolution containing such item originated. Section (c) permits Congress to reconsider any disapproved item of appropriation in the same manner as prescribed under Art. I, § 7 of the Constitution for reconsideration of vetoed bills.

Any statutory attempt to give item-veto power to the President would be contrary to the provision in the Constitution governing the veto power of the President. Art. I, § 7, cl. 2, states in pertinent part:

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.

The Veto Clause seems to give the President only two options: he may either sign the bill or return it with his objections. Thus, the language of the Constitution, on its face, does not seem to permit an item veto.



This conclusion is confirmed by the actual practice of United States Presidents under the Veto Clause. No President has ever attempted to exercise an item veto. To the contrary, many Presidents have expressly considered the question and concluded that the President is without item-veto power. In 1793, George Washington stated that he had signed many bills with which his judgment was at variance, but felt compelled to do so because "from the nature of the Constitution, I must approve all the parts of a Bill, or reject it in toto." 5/ President Grant, while urging the adoption of a constitutional amendment to authorize an item veto, recognized the absence of such power under the Constitution. 6/ William Howard Taft stated simply that the President "has no power to veto parts of the bill and allow the rest to become a law. He must accept it or reject it . . . ." 7/ This Department has consistently taken a similar position with respect to the meaning of the Veto Clause.

Thus, on the basis of the language of the Constitution and the uniform practice over the last 200 years, it appears that the Constitution does not grant to the President item-veto power. Furthermore, the Supreme Court has indicated recently that Congress may not alter by legislation the veto provisions of the Constitution. Immigration and Naturalization Service v. Chadha, 103 S. Ct. 2764 (1983). As the Court noted, "[e]xplicit and unambiguous provisions of the Constitution prescribe and define the respective functions of the Congress and of the Executive in the legislative process. . . . These provisions of Art. I are integral parts of the constitutional design for the separation of powers." 103 S. Ct. at 2787. Thus, legislation purporting to give the President an item veto would be an unconstitutional attempt to alter directly the President's veto power.

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5/ 33 Writings of George Washington 96 (1940).

6/ See VII J. Richardson, Messages and Papers of the President 242 (1898).

7/ W. Taft, Chief Magistrate 14 (1916).

### III. AN ALTERNATIVE STATUTORY APPROACH

That Congress may not directly grant an item veto by statute does not mean, however, that it may not accomplish substantially the same result by another method. The underlying purpose of an item veto would be to give the President some authority to disapprove individual items of appropriation. It is possible to grant the President such authority without giving him a veto over individual items in an appropriations bill. For example, Congress could adopt a statute that would provide the President with general authority not to expend any item of appropriation that he determined to be contrary to the national interest. Because the President's obligation to expend appropriated funds is, in the first instance, a question of statutory interpretation, such a clear direction from Congress would be a constitutional method for providing the President with some authority in this area. Cf. Train v. City of New York, 420 U.S. 35 (1975).

This authority, of course, would be circumscribed by Congress's explicit power to override by plenary legislative action any Presidential decision not to expend appropriated funds. For example, Congress could require that the President report any decision not to expend an individual item of appropriation within 30 days after making such a decision. The statute could then provide that Congress would have the opportunity to pass a new bill to reinstate the item of appropriation. At that point, the President could be required either to sign the new bill and expend the appropriated funds or to veto the new bill, at which point Congress would have the opportunity to override the President's veto. This statutory framework would have an effect very similar to the grant of an item veto. We believe that this type of statute clearly would be constitutional and is a much preferable method for granting item-veto power to the President.

#### IV. AN ITEM-VETO CONSTITUTIONAL AMENDMENT

Because we believe that the item veto is a necessary addition to the appropriations process, the proposed constitutional amendment remains as an alternative approach that we would support. Given the simplicity and ease of adopting a statute such as the one that we have outlined above, however, we do not believe that a constitutional amendment is the most efficient method for accomplishing the desired goal at this time. Therefore, we would urge that Congress proceed to develop a statutory proposal along the lines we have outlined.

The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

Robert A. McConnell  
Assistant Attorney General  
Office of Legislative Affairs

THE WHITE HOUSE

WASHINGTON

June 15, 1984

MEMORANDUM FOR M. B. OGLESBY, JR.  
ASSISTANT TO THE PRESIDENT  
FOR LEGISLATIVE AFFAIRS

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: Inquiry From Assistant Attorney General  
Robert McConnell on Line-Item Veto Issue

Assistant Attorney General Robert A. McConnell has inquired of both of us concerning an apparent reluctance at the White House to support a suggestion by the Justice Department that would go far to according the President line-item veto authority, without the necessity of a constitutional amendment. On January 12, 1984, Justice sought OMB clearance of a draft report on S.J. Res. 178, a proposed constitutional amendment granting line-item veto authority to the President, and S. 1921, a bill purporting to do the same. The Justice report concluded that the bill would be unconstitutional, and that it would be difficult to obtain the constitutional amendment. The Justice report suggested a third alternative -- a bill authorizing the President to refuse to spend all or part of an individual item of appropriation -- that would closely approximate a line-item veto in practice.

On January 23, 1984, I sent a memorandum to Messrs. Deaver, Darman, and Elliott, recommending support for the Justice alternative, and proposing language to be included in the State of the Union address outlining the Justice approach. At the same time I advised OMB that the proposed Justice report should be returned to Justice for final revision in light of the final text of the State of the Union Address. As delivered, the State of the Union Address noted that the grant of veto power "would be most effective if done by a constitutional amendment." This language in no way forecloses support for the Justice option either as an interim approach pending adoption of a constitutional amendment, or an alternative if such an amendment is considered not feasible. I have no legal objection to support for the Justice option.

If you concur, with whatever internal clearances you suggest, I will so advise Justice. Please advise.

Thank you.

FFF:JGR:aea 6/15/84

cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

June 14, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Inquiry From Assistant Attorney General  
Robert McConnell on Line-Item Veto Issue

Bob McConnell has sent identical memoranda to B. Oglesby and you, asking why the White House has resisted the Justice Department proposal to support legislation giving the President the power not to spend particular items of appropriation. A statute according the President such power would achieve the same result as a line-item veto: if the President were to decide not to spend a particular item, Congress could pass a law requiring him to do so. The President could then veto that specific bill, and Congress could then try to override the veto.

Justice suggested this approach in a letter it sent for clearance to OMB on January 12, 1984 (Tab A). The letter presented the Department's views on S.J. Res. 178, a proposed constitutional amendment granting line-item veto power, and S. 1921, a statute purporting to do the same directly. The proposed report concluded that S. 1921 would be unconstitutional, that a constitutional amendment would be difficult to achieve, and that a third approach -- that outlined above -- was superior. In our comments to OMB on the Justice report (Tab B), we agreed with OMB that it should not be cleared "at this point" in light of the plan for the President to request line-item veto authority in the State of the Union Address. We recommended that the report be returned to Justice for revision in light of that address.

Meanwhile, we took prompt action to ensure that those working on the address were fully aware of the Justice proposal. At your request, I prepared and you sent a memorandum to Deaver, Darman, and Elliott agreeing with the Justice recommendation and attaching suggested language outlining the Justice option (Tab C). Deaver, Darman, and Elliott did not adopt our suggested language. The State of the Union Address simply noted that the grant of line-item veto power "would be most effective if done by constitutional amendment," language which does not preclude support for Justice's option.

I recommend a memorandum to Oglesby, agreeing with McConnell that the Administration should support the Justice option. There is no inconsistency with doing so and simultaneously seeking a constitutional amendment. As we recommended back in January, however, the proposed Justice report on S.J. Res. 178 and S. 1921 will have to be revised in light of the State of the Union Address. The revision would simply involve a recognition that a constitutional amendment would be the "most effective" approach, although the report could go on to support the Justice option as desirable if a constitutional amendment is not feasible, or as an interim approach during the lengthy amendment process.

Attachment

THE WHITE HOUSE

WASHINGTON

June 15, 1984

MEMORANDUM FOR M. B. OGLESBY, JR.  
ASSISTANT TO THE PRESIDENT  
FOR LEGISLATIVE AFFAIRS

FROM: FRED F. FIELDING *Orig. signed by FFF*  
COUNSEL TO THE PRESIDENT

SUBJECT: Inquiry From Assistant Attorney General  
Robert McConnell on Line-Item Veto Issue

Assistant Attorney General Robert A. McConnell has inquired of both of us concerning an apparent reluctance at the White House to support a suggestion by the Justice Department that would go far to according the President line-item veto authority, without the necessity of a constitutional amendment. On January 12, 1984, Justice sought OMB clearance of a draft report on S.J. Res. 178, a proposed constitutional amendment granting line-item veto authority to the President, and S. 1921, a bill purporting to do the same. The Justice report concluded that the bill would be unconstitutional, and that it would be difficult to obtain the constitutional amendment. The Justice report suggested a third alternative -- a bill authorizing the President to refuse to spend all or part of an individual item of appropriation -- that would closely approximate a line-item veto in practice.

On January 23, 1984, I sent a memorandum to Messrs. Deaver, Darman, and Elliott, recommending support for the Justice alternative, and proposing language to be included in the State of the Union address outlining the Justice approach. At the same time I advised OMB that the proposed Justice report should be returned to Justice for final revision in light of the final text of the State of the Union Address. As delivered, the State of the Union Address noted that the grant of veto power "would be most effective if done by a constitutional amendment." This language in no way fore-closes support for the Justice option either as an interim approach pending adoption of a constitutional amendment, or an alternative if such an amendment is considered not feasible. I have no legal objection to support for the Justice option.

If you concur, with whatever internal clearances you suggest, I will so advise Justice. Please advise.

Thank you.

FFF:JGR:aea 6/15/84

cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

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cc: Robert A. McConnell  
Assistant Attorney General

FFF:JGR:aea 6/14/84  
bcc: FFFielding/JGRoberts/Subj/Chron



LE002

WHITE HOUSE  
CORRESPONDENCE TRACKING WORKSHEET

- JV
- O - OUTGOING
- H - INTERNAL
- I - INCOMING

Date Correspondence Received (YY/MM/DD) 1/1

Name of Correspondent: Robert A. McConnell

*John* \*

MI Mail Report

User Codes: (A) \_\_\_\_\_ (B) \_\_\_\_\_ (C) \_\_\_\_\_

Subject: Line Item Vets

ROUTE TO:

ACTION

DISPOSITION

| Office/Agency     | (Staff Name) | Action Code    | Tracking Date<br>YY/MM/DD | Type of Response | Code | Completion Date<br>YY/MM/DD |
|-------------------|--------------|----------------|---------------------------|------------------|------|-----------------------------|
| <u>CU Holland</u> |              | ORIGINATOR     | <u>DD 84/10/12</u>        |                  |      | <u>1 1</u>                  |
| <u>CU AT 18</u>   |              | Referral Note: | <u>ADD 84/10/13</u>       |                  |      | <u>S 84/10/23</u>           |
|                   |              | Referral Note: | <u>1 1</u>                |                  |      | <u>1 1</u>                  |
|                   |              | Referral Note: | <u>1 1</u>                |                  |      | <u>1 1</u>                  |
|                   |              | Referral Note: | <u>1 1</u>                |                  |      | <u>1 1</u>                  |
|                   |              | Referral Note: | <u>1 1</u>                |                  |      | <u>1 1</u>                  |

ACTION CODES:

- A - Appropriate Action
- C - Comment/Recommendation
- D - Draft Response
- F - Furnish Fact Sheet to be used as Enclosure
- I - Info Copy Only/No Action Necessary
- R - Direct Reply w/Copy
- S - For Signature
- X - Interim Reply

DISPOSITION CODES:

- A - Answered
- B - Non-Special Referral
- C - Completed
- S - Suspended

FOR OUTGOING CORRESPONDENCE:

- Type of Response = Initials of Signer
- Code = "A"
- Completion Date = Date of Outgoing

Comments: See ID 229491cu

Keep this worksheet attached to the original incoming letter.  
 Send all routing updates to Central Reference (Room 75, OEOB).  
 Always return completed correspondence record to Central Files.  
 Refer questions about the correspondence tracking system to Central Reference, ext. 2590.



Office of the Assistant Attorney General

Washington, D.C. 20530

June 11, 1984

MEMORANDUM236675 *u*

TO : Fred Fielding  
Counsel to the President

FROM: Robert A. McConnell  
Assistant Attorney General

RE : Line Item Veto

The subject of Presidential line item veto has been debated throughout this Congress and the President has announced his support for a constitutional amendment providing this power.

Given the time and the effort needed to secure adoption of a constitutional amendment, it has been a matter of some interest to me that no real effort has been made to enact legislation granting the President power to refuse to spend all or part of a particular item of appropriation. On several occasions, I have asked members of the White House staff why we have acted only to urge the adoption of a constitutional amendment and not to enact carefully tailored legislation. No one has seemed to be certain why the singular approach of a constitutional amendment has been followed. However, on several occasions I have been given the impression that White House personnel believes there are constitutional restraints on any such legislation.

Enclosed please find a letter that we sent to the Office of Management and Budget on January 12 of this year seeking clearance for this Department's views on a proposed constitutional amendment (S. J. Res. 178) and a bill (S. 1921) to allow the President to veto items of appropriation. As you will see, this Department has suggested a statute which would be an effective method for implementing the concept of the item veto and would avoid the need to amend the Constitution. To date, OMB has not commented upon or cleared our letter. This inaction seems to me to be inconsistent with our Administration's support of the concept that the President should have the power to veto individual items of appropriation. I would greatly appreciate any information that you can give me explaining the apparent determination not to seek a legislative solution to this matter.

JUN 11 1984

Time is of some concern to me as we now have outstanding correspondence from Senator Mattingly who has requested the Department's view on the constitutionality of providing line item veto by legislation.

Enclosure



U. S. Department of Justice  
Office of Legislative Affairs

Office of the Assistant Attorney General

**TO BUDGET FOR CLEARANCE**  
Washington, D.C. 20530

**NOT SENT TO CONGRESS**

Honorable Strom Thurmond  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, D. C. 20510

Re: Constitutional Amendment (S.J. Res. 178) and Bill  
(S. 1921) to Allow the President to Veto Items of  
Appropriation

Dear Mr. Chairman:

This responds to your request for the views of the Department of Justice on the above-referenced bill and proposed constitutional amendment, both of which would allow the President to veto items of appropriation. The Administration wholeheartedly supports the concept that the President should have the power to veto individual items of appropriation. This item veto power has long been urged by Presidents of both parties and is now essential to aid in controlling spending and keeping the federal budget under control.

As a practical matter, however, we do not believe that either the bill or the proposed constitutional amendment is the best way to accomplish this important goal. Although a constitutional amendment would be more permanent, it would involve considerable time and concerted effort to accomplish. On the other hand, the bill, as currently drafted, is inconsistent with the Constitution, which permits the President to veto only an entire bill and not individual parts thereof. Nevertheless, we feel that the same result could be obtained by a statutory provision that would grant the President power to refuse to spend all or part of a particular item of appropriation. As described more fully below, such a statute could include provisions for congressional override of the President's decision not to expend funds. We believe that such a statute would be an effective method for implementing the concept of the item veto and would avoid the need to amend the Constitution.

cc: DAG, OLC, JMD

## I. THE NEED FOR ITEM-VETO POWER

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Because of this problem, many Presidents have urged that the Presidency be provided with power to veto severable items within a bill. The calls for an item veto became particularly strong after the Civil War. The Confederate States of America had adopted an item-veto provision in their Constitution 1/, and after the war many individual states began to adopt similar item-veto provisions for their own constitutions. During that period, Presidents Grant and Arthur asked for the adoption of a constitutional amendment that would give the President item-veto power. 2/ In this century, Presidents of both parties have urged that the President be given item-veto power. In 1938, President Roosevelt supported the item veto and argued that it "has been considered a consistent corollary of the power of the legislature to withhold approval of items in the budget of the Executive; and the system meets with general approval in the many states which have adopted it." 3/ Similarly, in 1957, President Eisenhower asked Congress to give him the power to veto individual items in appropriation bills. 4/

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The Veto Clause seems to give the President only two options: he may either sign the bill or return it with his objections. Thus, the language of the Constitution, on its face, does not seem to permit an item veto.

This conclusion is confirmed by the actual practice of United States Presidents under the Veto Clause. No President has ever attempted to exercise an item veto. To the contrary, many Presidents have expressly considered the question and concluded that the President is without item-veto power. In 1793, George Washington stated that he had signed many bills with which his judgment was at variance, but felt compelled to do so because "from the nature of the Constitution, I must approve all the parts of a Bill, or reject it in toto." 5/ President Grant, while urging the adoption of a constitutional amendment to authorize an item veto, recognized the absence of such power under the Constitution. 6/ William Howard Taft stated simply that the President "has no power to veto parts of the bill and allow the rest to become a law. He must accept it or reject it . . . ." 7/ This Department has consistently taken a similar position with respect to the meaning of the Veto Clause.

Thus, on the basis of the language of the Constitution and the uniform practice over the last 200 years, it appears that the Constitution does not grant to the President item-veto power. Furthermore, the Supreme Court has indicated recently that Congress may not alter by legislation the veto provisions of the Constitution. Immigration and Naturalization Service v. Chadha, 103 S. Ct. 2764 (1983). As the Court noted, "[e]xplicit and unambiguous provisions of the Constitution prescribe and define the respective functions of the Congress and of the Executive in the legislative process. . . . These provisions of Art. I are integral parts of the constitutional design for the separation of powers." 103 S. Ct. at 2787. Thus, legislation purporting to give the President an item veto would be an unconstitutional attempt to alter directly the President's veto power.

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This authority, of course, would be circumscribed by Congress's explicit power to override by plenary legislative action any Presidential decision not to expend appropriated funds. For example, Congress could require that the President report any decision not to expend an individual item of appropriation within 30 days after making such a decision. The statute could then provide that Congress would have the opportunity to pass a new bill to reinstate the item of appropriation. At that point, the President could be required either to sign the new bill and expend the appropriated funds or to veto the new bill, at which point Congress would have the opportunity to override the President's veto. This statutory framework would have an effect very similar to the grant of an item veto. We believe that this type of statute clearly would be constitutional and is a much preferable method for granting item-veto power to the President.



#### IV. AN ITEM-VETO CONSTITUTIONAL AMENDMENT

Because we believe that the item veto is a necessary addition to the appropriations process, the proposed constitutional amendment remains as an alternative approach that we would support. Given the simplicity and ease of adopting a statute such as the one that we have outlined above, however, we do not believe that a constitutional amendment is the most efficient method for accomplishing the desired goal at this time. Therefore, we would urge that Congress proceed to develop a statutory proposal along the lines we have outlined.

The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

Robert A. McConnell  
Assistant Attorney General  
Office of Legislative Affairs

THE WHITE HOUSE

WASHINGTON

January 24, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Presidential Remarks: Meeting With  
Republican Members of the House  
Friday, January 27, 1984

Richard Darman has asked that comments on the above-referenced remarks be sent directly to Ben Elliott by 1:00 p.m. today. The brief remarks review the progress of the economic recovery and our improved posture in international affairs. The President thanks the House Republicans for their efforts, and pledges to do everything within his power to increase their numbers. He also states that "we must pass the line-item veto." These remarks will be delivered after the State of the Union, and we have presented our views on what the State of the Union should say about the vehicle for obtaining line-item veto authority. I think the phrase "we must pass the line-item veto" is broad enough to embrace our suggested vehicle. I have no objection.

Attachment

THE WHITE HOUSE

WASHINGTON

January 24, 1984

MEMORANDUM FOR BEN ELLIOTT  
DEPUTY ASSISTANT TO THE PRESIDENT  
DIRECTOR, PRESIDENTIAL SPEECHWRITING OFFICE

FROM: FRED F. FIELDING Orig. signed by FFF  
COUNSEL TO THE PRESIDENT

SUBJECT: Presidential Remarks: Meeting With  
Republican Members of the House  
Friday, January 27, 1984

Counsel's Office has reviewed the above-referenced remarks,  
and finds no objection to them from a legal perspective.

cc: Richard G. Darman  
Assistant to the President

FFF:JGR:aea 1/24/84  
bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

January 24, 1984

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## WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

- O - OUTGOING
  - H - INTERNAL
  - I - INCOMING
- Date Correspondence Received (YY/MM/DD) 1 1

Name of Correspondent: Richard G. DARMAN

MI Mail Report      User Codes: (A) \_\_\_\_\_ (B) \_\_\_\_\_ (C) \_\_\_\_\_

Subject: Presidential Remarks: Meeting with  
Republican Members of the House  
Friday, January 27, 1984

| ROUTE TO:                  | ACTION         | DISPOSITION               |                          |                                |
|----------------------------|----------------|---------------------------|--------------------------|--------------------------------|
| Office/Agency (Staff Name) | Action Code    | Tracking Date<br>YY/MM/DD | Type of Response<br>Code | Completion Date<br>YY/MM/DD    |
| <u>CWJOL</u>               | ORIGINATOR     | <u>8410124</u>            |                          | <u>1 1</u>                     |
|                            | Referral Note: |                           |                          |                                |
| <u>CWDT18</u>              | <u>D</u>       | <u>8410124</u>            |                          | <u>S8410124</u><br><u>1:00</u> |
|                            | Referral Note: |                           |                          |                                |
| <u>CWAT17</u>              | <u>I</u>       | <u>8410124</u>            |                          | <u>1 1</u>                     |
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**ACTION CODES:**  
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     to be used as Enclosure

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**FOR OUTGOING CORRESPONDENCE:**  
 Type of Response = Initials of Signer  
 Code = "A"  
 Completion Date = Date of Outgoing

Comments: \_\_\_\_\_  
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# WHITE HOUSE STAFFING MEMORANDUM

DATE: 1/23/84 ACTION/CONCURRENCE/COMMENT DUE BY: 1:00 p.m. TUESDAY, 1/24/84

SUBJECT: PRESIDENTIAL REMARKS: MEETING WITH REPUBLICAN MEMBERS OF THE HOUSE

FRIDAY, JANUARY 27, 1984

|                | ACTION FYI                          |  |            | ACTION FYI                          |                                     |
|----------------|-------------------------------------|--|------------|-------------------------------------|-------------------------------------|
| VICE PRESIDENT | <input type="checkbox"/>            | <input type="checkbox"/>               | McFARLANE  | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| MEESE          | <input type="checkbox"/>            | <input checked="" type="checkbox"/>    | McMANUS    | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| BAKER          | <input type="checkbox"/>            | <input checked="" type="checkbox"/>    | MURPHY     | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| DEAVER         | <input type="checkbox"/>            | <input checked="" type="checkbox"/>    | OGLESBY    | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| STOCKMAN       | <input checked="" type="checkbox"/> | <input type="checkbox"/>               | ROGERS     | <input type="checkbox"/>            | <input type="checkbox"/>            |
| DARMAN         | <input type="checkbox"/> P          | <input checked="" type="checkbox"/> SS | SPEAKES    | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| FELDSTEIN      | <input checked="" type="checkbox"/> | <input type="checkbox"/>               | SVAHN      | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| FIELDING       | <input checked="" type="checkbox"/> | <input type="checkbox"/>               | VERSTANDIG | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| FULLER         | <input checked="" type="checkbox"/> | <input type="checkbox"/>               | WHITTLESEY | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| HERRINGTON     | <input type="checkbox"/>            | <input type="checkbox"/>               | HENKEL     | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| HICKEY         | <input type="checkbox"/>            | <input type="checkbox"/>               | ELLIOTT    | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| JENKINS        | <input type="checkbox"/>            | <input type="checkbox"/>               | FISCHER    | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
|                |                                     |  | TUTWILER   | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |

REMARKS:

Please forward any edits/comments directly to Ben Elliott in room 100 by 1:00 p.m. TOMORROW, TUESDAY, January 24, 1984, with an information copy to my office.

Thank you.

RESPONSE:

Richard G. Darman  
Assistant to the President  
Ext. 2702

Received S S  
1984 JAN 23 PM 6:36

(Robinson/BE)  
January 23, 1984  
6:30 p.m.

PRESIDENTIAL REMARKS: MEETING WITH REPUBLICAN MEMBERS  
OF THE HOUSE  
FRIDAY, JANUARY 27, 1984

It's a pleasure for me to be here this afternoon -- as one who knows firsthand the good work you've been doing on the Hill.

I want to share with you two quotations I came across recently in my unofficial reading. Both of them come from the same source -- a man who was a celebrated speaker, journalist, soldier, historian, and statesman. His name was Winston Churchill. Some say that if he wanted to, he could even have been a great character actor.

Churchill said that people who are not prepared to "do unpopular things" and "defy clamor" are not fit to govern "in times of stress." He also said when he visited this country that Americans "did not cross the ocean, cross the mountains, and cross the prairies because they are made of cotton candy."

Well, I believe Sir Winston had a point.

Think back to the opening days of this Administration. Many observers predicted that we could not work together, that the economic and social problems that had piled up over 50 years were insurmountable.

We've proved the critics wrong. And we did it by working together, building a bipartisan coalition and daring to chart a new course.

Inflation has plummeted to about 3 percent during the last year -- the lowest rate in a decade-and-a-half. The prime interest rate is nearly half what it was when we took office.

Factory orders, retail sales, and housing starts are up; the stock market has come back to life; real wages are rising; and America is leading the world in a technological revolution even more far-reaching and profound than the Industrial Revolution of a century ago.

Unemployment is dropping at the fastest rate in more than 30 years. Last year alone more than 4 million Americans found jobs, and today some 103 million Americans are at work -- more than ever before in our history.

In the military, morale has soared as we've begun giving the men and women in our Armed Forces good pay, good equipment, and the respect they deserve. In foreign policy, the world knows once again what America stands for -- the freedom of mankind. From Central America, to Africa, to the Middle East, we're working to support democracy and promote peace.

In Lebanon, the peace process has been slow and painful, but we've made genuine progress. In Europe, the NATO Alliance has held firm. In our dealings with the Soviets, by strengthening our defenses and showing the world our willingness to negotiate, we've laid the foundations for a lasting world peace. And on an island in the Caribbean, we set a nation free.

There's a story -- a true story -- about Grenada that I must tell you. One of our soldiers was involved in the liberation of the island, and he noticed that every single press account he read mentioned that Grenada is the world's leading producer of nutmeg -- every account. He figured this must be a code for something, and in a letter home he broke that code. Number one:



Grenada is the world's leading producer of nutmeg. Number two: The Soviets and Cubans wanted Grenada. Number three: You have to have nutmeg to have eggnog. Number four: You need eggnog to have Christmas. Number five: The Soviets and Cubans were trying to steal Christmas. And number six: We stopped them.

We're changing the course of American history -- and we're doing it together. Believe me, there's no better place to sit than the Oval Office if you want to see the importance of House Republicans. In 1984 nothing matters more than increasing your numbers, and I pledge to do all within my power to see that we do just that.

In the meantime, we have our work cut out for us. We must get on with the job of bringing the budget under still better control. To contain spending, we must pass the line-item veto. We must bring inflation and interest rates down still further without loading new burdens on the back of the American taxpayer. We must maintain a strong defense and face our world responsibilities squarely. And we must continue to return resources and responsibilities to the American people that will mean more savings, more freedom, more economic opportunity and more jobs for all Americans.

That's my policy. I believe it's a good one -- for our party, but far more important, for America. Let us strive together to make it work.

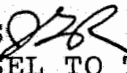
Thank you, and God bless you.

THE WHITE HOUSE

WASHINGTON

May 21, 1984

MEMORANDUM FOR GREGORY JONES  
LEGISLATIVE ATTORNEY  
OFFICE OF MANAGEMENT AND BUDGET

FROM: JOHN G. ROBERTS   
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Department of the Treasury  
Statement on Line-Item Veto

Counsel's Office has reviewed the above-referenced testimony, and finds no objection to it from a legal perspective.

## WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

O - OUTGOING

H - INTERNAL

I - INCOMING

Date Correspondence Received (YY/MM/DD)   1  /  1  /  

Name of Correspondent: James C. Murr

MI Mail Report

User Codes: (A) \_\_\_\_\_ (B) \_\_\_\_\_ (C) \_\_\_\_\_

Subject: Dept. of the Treasury statement on line - eten veto

**ROUTE TO:**

**ACTION**

**DISPOSITION**

| Office/Agency    | (Staff Name) | Action Code           | Tracking Date<br>YY/MM/DD  | Type of Response | Code | Completion Date<br>YY/MM/DD |
|------------------|--------------|-----------------------|----------------------------|------------------|------|-----------------------------|
| <u>W Holland</u> |              | <u>ORIGINATOR</u>     | <u>84/05/17</u>            |                  |      | <u>  1  /  1  /  </u>       |
| <u>CUAT 18</u>   |              | <u>Referral Note:</u> | <u>reply to Greg Jones</u> |                  |      | <u>  5  84/05/21</u>        |
|                  |              | <u>Referral Note:</u> |                            |                  |      | <u>  1  /  1  /  </u>       |
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EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

May 16, 1984

**SPECIAL**

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer  
Department of Justice

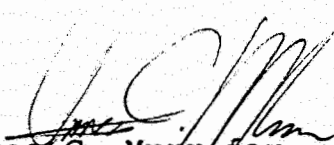
*John*

SUBJECT: Department of the Treasury statement on line-item veto.

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

A response to this request for your views is needed no later than  
May 21, 1984.

Questions should be referred to Gregory Jones (395-3856), the legislative analyst in this office.

  
James C. Murr for  
Assistant Director for  
Legislative Reference

Enclosures

cc: Fred Fielding      Pete Modlin  
    Roger Greene        Mike Uhlmann  
    Adrian Curtis       Mike Horowitz

Statement of the Honorable  
Donald T. Regan  
Secretary of the Treasury  
on Proposals for a Line-Item Veto  
Submitted for the Record  
Subcommittee on the Constitution  
of the  
Senate Committee on the Judiciary  
April 1984

I am pleased to have this opportunity to offer the views of the Administration on proposals for a line-item veto. As President Reagan stated in his State of the Union Address in January, this Administration strongly favors a constitutional amendment to give the President line-item veto authority. We believe that such authority would be a valuable tool for controlling excessive federal spending and reducing budget deficits. We urge this Committee to move forward expeditiously on a line-item veto amendment.

THE NEED FOR A LINE-ITEM VETO

The case for a line-item veto is, in our view, compelling.

## Consistency With the Constitution

A line-item veto would fit well with our constitutional framework. As part of our system of checks and balances, the Framers gave to the President the power to veto laws that he believes to be unwise, subject to a Congressional power to override his veto by a two-thirds vote. The Presidential veto serves as a vehicle by which the Executive brings a unique institutional perspective to the process of enacting laws -- that of the official assigned to administer those laws. The Framers believed, in our judgment correctly, that the special experience and perspective that accompany the Presidency warrant granting the individual holding that office the power to disapprove proposed legislation. Although the Framers' philosophy might be criticized on the ground that it makes the process enacting laws more cumbersome, we believe that they were correct in believing that this process results in more careful decision-making and wiser laws.

The absence of line-item veto authority from the Constitution does not reflect a decision by the Framers to deny that power to the President; the Framers simply never considered the issue. Undoubtedly, they anticipated that Congress would provide funds by passing separate appropriations bills for discrete programs or activities, rather than omnibus bills encompassing a variety of related and unrelated matters. Until about the time of the Civil War, Congressional practice was in

accordance with this expectation. Presidents were thus able to sign or veto appropriations bills based upon the merits of the programs being funded and the need for the particular amounts.

Since the Civil War, however, Congress has increasingly relied on appropriations bills that cover a variety of programs. This habit has made it more difficult for the President to carry out the function the Framers intended in granting him veto authority, for he must judge a particular appropriation not on its own merits, but as part of a large package of often unrelated items. Under these circumstances, the President's veto must necessarily be used in a more limited way than the Framers probably imagined, and many wasteful appropriations slip by under the protective wing of essential or politically popular programs.

In response to similar conditions at the state level, the constitutions of 43 states grant the governor some form of line-item veto authority. The use of these powers -- which vary in scope from state to state -- has not drawn opposition, and I am aware of no serious effort to limit or eliminate a governor's line-item veto authority. Clearly, the state experience is that a line-item veto appropriately balances the powers of the executive and legislative branches, and accords with each state's constitutional separation-of-powers system.

The state experience suggests that a constitutional amendment granting the President line-item veto authority would

work well in a federal context, filling a constitutional lacuna by giving effect to the principle that the President should pass judgment on the wisdom of legislation before it becomes law.

### Budgetary Concerns

Presidents have sought line-item veto authority since President Grant. Today, however, that need has become urgent.

In the last decade, federal spending surged out of control. Total Federal spending tripled during the period 1969-1980 and grew by nearly 17.5 percent in the year before this Administration took office. These spending increases were financed in large part by automatic tax increases produced by inflation -- popularly known as "bracket creep." The result of this inflation-tax windfall was that the tax burden on the average American increased dramatically during this period without Congress having to vote to increase taxes. In the Economic Recovery Tax Act of 1981, this Administration, working with the Congress, put a stop to this process by enacting legislation that reduced marginal tax rates by 25 percent during the period 1981 to 1983, and indexed tax rates starting in 1985.

On the spending side, we have also jointly made considerable progress by cutting back the rate of growth of federal spending. However, more needs to be done; budget deficits remain a problem and must be reduced.



Some now call for reducing deficits by reversing the tax reforms of 1981, and by increasing the taxes paid by the average American. The Administration, however, opposes "solving" the deficit problem by raising taxes, an action that would remove resources from the productive private sector, stifle incentives and economic growth, and ultimately increase deficits. Budget deficits must not be reduced by putting our economy in the strait-jacket of excessive taxation. Instead, we must force government to live within the means of the people.

Moreover, proposals to increase taxes are grounded on a faulty assumption -- that federal deficits are too high because federal taxes are too low. The roots of the deficits problem, however, are in excessive federal spending. ERTA's 25% reduction in marginal tax rates offset the increases in the tax burden brought about by the combination of bracket creep and higher payroll taxes during the period 1981-83. But it barely put a dent in the increases in the tax burden that occurred between 1965 and 1980. And indexing only keeps the future burden of the federal income tax from rising because of inflation; it does not, as the proponents of tax increases seem to believe, cut taxes.

Thus, the Administration believes that the solution to the deficit problem must come primarily from the expenditure side and the results of economic growth. As the Grace Commission report showed, there is plenty of fat in the federal government. The time has come to cut unnecessary and wasteful expenditures. By

controlling federal spending and strengthening economic growth we can solve the deficit problem.

A crucial tool in controlling federal expenditures is the President's power to veto appropriation bills he believes to be excessive. As has already been noted, however, under current law, when a President is presented with an excessive appropriations bill, he is often faced with two undesirable choices: signing a bill that contains wasteful spending or vetoing a bill that contains urgently needed appropriations.

Unfortunately, special interests have been successful in taking advantage of this phenomenon by attaching wasteful and unnecessary spending to essential appropriations bills, knowing that the President will be reluctant to veto an entire bill on account of such provisions. This tactic has become even more tempting to Congress in recent years, as the failure to enact individual appropriations bills has made necessary the passage of continuing resolutions. For the President, vetoing a continuing resolution generally carries with it a serious disadvantage in addition to those that accompany vetoing an appropriations bill that encompasses a variety of subjects -- doing so can cause large portions of the government to run out of spending authority. Even if the President does veto a continuing resolution -- as President Reagan has done -- there is never time for him to reach agreement with Congress on its "minor" provisions, which can be quite significant in dollar terms.

Line-item veto authority would provide the President with a much-needed option between vetoing or signing an entire bill: he could veto the appropriation items he considers unreasonable, sending them back to Congress for possible override, and he could approve the remainder of the bill, on which both he and Congress agree. No longer would special interest programs or "pork barrel" projects be able to escape a Presidential judgment.

#### ARGUMENTS AGAINST A LINE-ITEM VETO

A number of arguments have been made against a line-item veto amendment. We find none convincing, but two deserve comment.

##### Not a Panacea

Ironically, one of the principal arguments that has been advanced against a line-item veto constitutional amendment is that such an amendment would not solve the federal deficit problem. Opponents of a line-item veto amendment point out that the President could not use it to cut permanently appropriated funds (so-called uncontrollable spending), which amount to approximately 55 percent of total federal spending, or to cut appropriations committed from previous years, which amount to approximately 20 percent of federal spending. Thus, for example, the House Budget Committee has asserted that of the \$925 billion it estimated would be spent in Fiscal 1985, only \$86

billion of "non-defense discretionary spending" could realistically be said to be subject to the line-item veto.

The Administration agrees that, by itself, the grant of line-item veto authority to the President would not cause federal budget deficits to disappear. Indeed it is because we agree that the line-item veto is not in and of itself enough that we have supported and continued to support a balanced-budget amendment.

Line-item veto authority would, however, be a valuable tool for reducing federal expenditures. It is a tool that would be targeted at the most wasteful and unnecessary programs: the ones that currently must be attached to urgent legislation in order to avoid particularized scrutiny that would certainly lead to a veto. The mere fact that the President had line-item veto authority should prevent some wasteful proposals from passing the Congress. Most others would be unable to survive a Presidential veto.

Thus, although a line-item veto amendment would not be a panacea for excessive spending, its adoption would be an important step toward bringing spending under control.

#### Invasion of Congressional Prerogatives

Another argument against the line-item veto is that granting the President such authority would invade legitimate

Congressional prerogatives or would fundamentally reorder the division of powers between the executive and legislative branches in a way inconsistent with our Constitution. We disagree.

Under a line-item veto, Congress would retain its authority to determine how specific it wishes to be in appropriating particular amounts for particular programs. The only difference brought about by a line-item veto would be that each such appropriation would become subject to Presidential review. Congress can hardly be said to have a legitimate interest -- let alone a prerogative -- in preventing the President from judging each spending program that it wishes to fund on its individual merits.

Nor would adoption of a line-item veto proposal be a departure from the Framers' scheme for dividing power. It would simply compensate for the developments outlined earlier that have undercut the President's veto authority, restoring the balance of power between the branches that the Framers sought to establish. Furthermore, the experience of the states belies the claim that granting the President line-item veto authority would unduly limit Congress' legislative power.

But even assuming for the sake of argument that a line-item veto amendment would diminish the current spending powers of Congress to some degree, the proposal nevertheless seems clearly warranted. Many students of our system, including many

Congressmen, have noted that Congress has great difficulty in limiting spending. Increasingly in recent years, special interest groups have succeeded in bludgeoning Congress into spending through a logrolling process in which coalitions of groups -- none of them strong enough by itself to obtain a Congressional majority -- work together to achieve the mutually shared end of dipping into the public purse.

Federal spending cannot be brought under control in these circumstances; granting the President line-item veto authority offers one way to do so. The proposal is narrowly drawn -- only appropriations bills would be subject to a line-item veto -- and thus the line-item veto does not increase Presidential power any more than is necessary to bring Federal spending under control.

#### STRUCTURING A LINE-ITEM VETO

##### The Power to Reduce Line-Items

The Administration believes that in order to be most effective as a tool for controlling spending, a line-item veto amendment should make clear the President's authority to reduce particular line-items as well as to eliminate them entirely. Wasteful spending does not occur solely in the form of programs that are completely unnecessary; it often comes in the form of excessive appropriations for deserving programs. The President should have the power to act against it in either form.

The Administration recognizes that the power to reduce expenditures is a broad power, but it is essential to achieve the ends of the line item veto proposal. The President should not be put to a choice of "zeroing out" a worthwhile program because Congress has appropriated too much money for its administration. In those states that allow their governor to reduce appropriations the power has been used without adverse consequences.

#### Two-thirds vs. Majority Override

Some have suggested that a line-item veto be structured so as to permit Congress to override vetos of particular line items or reductions of line items by a less than two-thirds vote. The Administration believes that allowing an override by a less than two-thirds vote would be an unjustified departure from the Framers' design. We oppose departing from that design, especially because doing so could undermine the amendment's effectiveness as a means of controlling federal spending.

#### Amendment vs. Bill

Some proponents of a line-item veto have suggested that it could be accomplished by legislation. For example, it has been suggested that Congress declare each line-item in a piece of appropriations legislation as a separate bill, on the theory that the President could then veto line-items if that was his desire.

To be effective, a statutory line-item veto bill would have to be "binding"; that is, it could not provide that each line-item in a piece of legislation is a separate bill unless the legislation provides otherwise. Such a provision, of course, would allow Congress to exempt line-items from the veto, and render the statutory line-item veto useless. Even if legislation were drafted to preclude Congress from exempting line-item from the veto, however, that legislation would still be subject to repeal by Congress, and thus would not be as effective as an amendment.

A statutory line-item veto also raises constitutional questions. Arguably such legislation would violate the presentment clause of the Constitution, especially if it were drafted as a statutory provision binding on Congress.

For these reasons, the Administration believes that a constitutional amendment would be preferable to a statutory line-item provision because it would be more effective and would resolve any ambiguity about the constitutionality of the measure.

#### CONCLUSION

When he was Governor of California, the President had line-item veto authority, and used it with great effectiveness in eliminating wasteful and special interest spending. Indeed, not one of his vetoes was overridden. The line-item veto fits well



within our constitutional framework, filling a gap to make the Framers's intentions more effective. Moreover, it is needed urgently as a mechanism for bringing federal spending under control. We urge this Committee and the Congress to approve a line-item veto amendment.

THE WHITE HOUSE  
WASHINGTON

May 9, 1984

MEMORANDUM FOR JOHN ROBERTS

FROM: BOB GLEASON *BG*  
SUBJECT: RESOLUTION ON LINE-ITEM VETO

---

Per our conversation, attached is the resolution on Presidential line-item veto which will be introduced at a policy-making meeting of the National Conference of State Legislatures.

The resolution will be introduced tomorrow (Thursday, May 10), so if you have any further thoughts please let me know.

Thanks.

NCSL believes that reducing the federal government's deficits should be a top national priority. It further recognizes that granting the President line-item veto authority over Congressional Appropriation might be a valuable fiscal management tool in achieving this goal. However, as state legislators we feel that this is an important Constitutional question, and that the granting of such authority to the President should be done through an amendment to the Constitution.

NCSL therefore urges the Congress to adopt an Amendment granting line-item veto authority to the President and sending it to the nation's state legislature to vote on ratification.