

An hourglass-shaped graphic with a globe in the top bulb and another globe in the bottom bulb. The hourglass is light blue, and the globes are a darker blue. The top bulb is partially filled with a dark blue liquid, which is dripping down into the bottom bulb. The word "WikiLeaks" is written in white on a dark blue rectangular background at the bottom of the hourglass.

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Item Veto: Budget Savings

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Abstract. Congressional interest in an item veto for the President may resurface during the 109th Congress. At a news conference on November 4, 2004, President George W. Bush expressed an interest in receiving item-veto authority "to maintain budget discipline." In early 2005, when the Administration submitted its budget for FY2006, the volume on "Analytical Perspectives" contained a section proposing a line-item veto "linked to deficit reduction." An earlier congressional effort - the Line Item Veto Act of 1996- was struck down as unconstitutional by the Supreme Court in *Clinton v. City of New York* (1998). This report examines the potential of an item veto to yield budgetary savings as part of an overall strategy to reduce the budget deficit. Lessons drawn from earlier Administrations indicate that the reductions that can be expected from the exercise of an item veto would likely be of modest dimensions.

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Item Veto: Budgetary Savings

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Summary

Congressional interest in an item veto for the President may resurface during the 109th Congress. At a news conference on November 4, 2004, President George W. Bush expressed an interest in receiving item-veto authority “to maintain budget discipline.” In early 2005, when the Administration submitted its budget for FY2006, the volume on “Analytical Perspectives” contained a section proposing a line-item veto “linked to deficit reduction.” An earlier congressional effort — the Line Item Veto Act of 1996 — was struck down as unconstitutional by the Supreme Court in *Clinton v. City of New York* (1998). This report examines the potential of an item veto to yield budgetary savings as part of an overall strategy to reduce the budget deficit. Lessons drawn from earlier Administrations indicate that the reductions that can be expected from the exercise of an item veto would likely be of modest dimensions. This report was originally authored by Louis Fisher and will be updated as necessary.

Background

Speaking at a news conference on November 4, 2004, President George W. Bush said he “would like to see the President have a line-item veto again, one that passed constitutional muster. I think it would help the executive branch work with the legislative branch to make sure that we’re able to maintain budget discipline.”¹ When his budget was submitted to Congress on February 7, 2005, the volume “Analytical Perspectives” contained a section on budget reform proposals, including the line-item veto. It stated that a “perennial criticism” of the federal government is that spending and tax legislation include provisions benefitting “a relative few,” provisions that would “likely not become law if considered as a stand-alone bill.”² As proposed by this section, a line-item veto “would give the President the authority to defer new spending whenever the President determines the spending is not an essential Government priority.” All savings resulting

¹ *Weekly Compilation of Presidential Documents*, vol. 40, p. 2793.

² *Budget of the United States Government: Analytical Perspectives*, Fiscal Year 2006, p. 240.

from the line-item veto “would be used for deficit reduction, and they could not be applied to augment other spending.”³

Scope of Proposal

The Administration has not released draft language to define precisely how the item veto would operate. The description in “Analytical Perspectives” has three elements: (1) the President would be authorized to “defer” new spending, (2) he could act whenever he determined it was not “an essential Government priority,” and (3) all savings would be used for deficit reduction. Apparently this excludes tax legislation but may include mandatory spending. Two of the elements seem identical to the Line Item Veto Act of 1996 that the Supreme Court struck down in *Clinton v. City of New York*, 524 U.S. 417 (1998). The Line Item Veto Act identified three reasons why the President could cancel discretionary budget authority, provide new direct spending, or limit a tax benefit. The President would be required to determine that such cancellation would “(i) reduce the Federal budget deficit, (ii) not impair any essential Government functions, and (iii) not harm the national interest.”⁴ Even in the presence of those stated purposes, as conditions placed on delegated authority, the Court invalidated the act.

“Deferring” New Spending

It is unclear what is meant by authorizing the President to “defer new spending.” Defer generally means to delay or postpone. There would be little, if any, budgetary savings by deferring, other than perhaps pushing the spending from one fiscal year to the next, which would reduce the deficit in one year and increase it in a future year. If Congress had appropriated the funds to be spent within a particular year (one-year money), federal agencies would have a legal obligation to obligate the money that year. To avoid that restriction, it would be necessary for the Administration to seek new statutory authority to change the money from one-year to a multi-year period.

Perhaps the section in “Analytical Perspectives” means “defer” in the sense of the deferral process incorporated in the Impoundment Control Act of 1974, as amended. The statute defines “deferral of budget authority” in this manner: “(A) withholding or delaying the obligation or expenditure of budget authority (whether by establishing reserves or otherwise) provided for projects or activities; or (B) any other type of Executive action or inaction which effectively precludes the obligation or expenditure of budget authority, including authority to obligate by contract in advance of appropriations as specifically authorized by law.”⁵ The purpose of deferrals was to delay spending, not to cancel it. As a result of litigation during the Reagan Administration, Congress passed legislation to restrict deferrals to routine administrative actions and thus prevent deferrals simply because the executive branch opposed a program or activity.⁶

³ Ibid., p. 241.

⁴ P.L. 104-130; 110 Stat. 1200, § 2(a) (1996) (Sec. 1021(a)).

⁵ P.L. 93-344; 88 Stat. 333, § 1011(1).

⁶ *City of New Haven, Conn. v. United States*. 809 F.2d 900 (D.C. Cir. 1987); 101 Stat. 785, § 206 (1987).

Magnitude of Budget Deficits

The Administration's current budget projects the following deficits for fiscal years 2005, 2006, and 2007: \$427 billion, \$390 billion, and \$312 billion.⁷ However, the budget explains that these deficits do not include the costs of continuing operations in Afghanistan and Iraq.⁸ The Congressional Budget Office (CBO) has computed that \$30 billion, \$70 billion, and \$75 billion would be added to the deficit for those years by assuming the phasedown of activities in Iraq and Afghanistan "and continued spending for the global war on terrorism."⁹ These CBO adjustments bring the deficits for fiscal years 2005, 2006, and 2007 to \$457 billion, \$460 billion, and \$387 billion. Another approach is to take the deficit in CBO's baseline for those three years (\$368 billion, \$295 billion, and \$261 billion) and add the amounts for Iraq and Afghanistan, yielding these totals: \$398 billion, \$364 billion, and \$336 billion. Under these scenarios, the budget deficit for a particular fiscal year exceeds \$300 billion and in some instances even \$400 billion. Deficits could increase from future policy changes such as modifications of the Alternative Minimum Tax (AMT).

Savings from an Item Veto

It is impossible to estimate possible savings without knowing the precise item veto proposal the Administration is likely to submit to Congress. However, the experience with the item veto, both conceptually and in actual practice, suggests that the amounts that might be saved by a presidential item veto could be relatively small, in the range of perhaps one to two billion dollars a year.¹⁰ Under some circumstances, the availability of an item veto could increase spending. The Administration might agree to withhold the use of an item veto for a particular program if Members of Congress agreed to support a spending program initiated by the President. Aside from modest savings, the impact of an item veto may well be felt in preferring the President's spending priorities over those enacted by Congress.

GAO Report in 1992

In January 1992, the General Accounting Office (GAO) released a report that estimated the savings that could be achieved through a presidential item veto. The study assumed that the President would apply the item veto to all the items objected to by the Administration in its Statements of Administration Policy (SAPs). GAO estimated that

⁷ *Budget of the United States Government*, Fiscal Year 2006, p. 362.

⁸ *Ibid.*, pp. 20-21.

⁹ Congressional Budget Office, *The Budget and Economic Outlook: Fiscal Years 2006 to 2015*, p. 8.

¹⁰ In 1988, the Administration released a study indicating what President Reagan would have item-vetoed in a continuing resolution for FY1988 had he the authority. Out of \$1.064 trillion in outlays, he would have eliminated \$336.1 million in appropriations, \$403.1 million in programs repealed or amended, and \$801 million in loan assets sales, for a total of \$1.540 billion. H. Doc. No. 100-174, 100th Cong., 2d Sess. (1988).

the savings over a six-year period, during fiscal years 1984 through 1989, could have been \$70 billion.¹¹

The Congressional Research Service (CRS) reviewed the GAO study and made an alternative estimate of savings of “\$2-3 billion over a six-year period and probably less.” CRS questioned the acceptance of SAPs prepared early in the process as a reliable guide for what happens when Presidents receive appropriations bills. It also contested other assumptions used in the GAO study. The CRS report cautioned that an item veto could increase spending if a President, armed with an item veto, told lawmakers that a project or program in their district or state would be item-vetoed unless they supported a spending initiative favored by the President.¹²

On July 23, 1992, Comptroller General Charles A. Bowsher acknowledged that actual savings from an item veto “are likely to have been much less” than the potential savings estimated in the GAO study. Actual savings “could have been substantially less than the maximum and maybe, as you have suggested, close to zero.” Mr. Bowsher also discussed situations “in which the net effect of item veto power would be to increase spending.” Such a result could occur if a President “chose to announce his intent to exercise an item veto against programs or projects favored by individual Senators and Representatives as a means of gaining their support for spending programs which would not otherwise have been enacted by the Congress.”¹³

Cancellations by President Clinton

The Line Item Veto Act of 1996 authorized the President to cancel discretionary appropriations, any new item of direct spending (entitlements and other mandatory programs), and certain limited tax benefits. Congress would have to pass a resolution of disapproval within 30 days. The President could veto that resolution and force an override vote in each House. President Bill Clinton used this statutory authority to cancel a number of discretionary appropriations, new items of direct spending, and targeted tax benefits. The total savings, over a five-year period, came to less than \$600 million. His cancellations for fiscal year 1998 were about \$355 million out of a total budget of \$1.7 trillion.¹⁴

The totals would have been somewhat higher had all the recommendations by President Clinton been accepted by Congress. He canceled 38 projects in the military construction bill, estimating that this would save \$290 million over a five-year period. He identified three criteria that guided the selections: (1) the Defense Department

¹¹ U.S. General Accounting Office, *Line Item Veto: Estimating Potential Savings*, GAO/AFMD-92-7, January 1992.

¹² CRS memorandum of March 23, 1992 to Senator Robert C. Byrd from Louis Fisher, Senior Specialist in Separation of Powers, reprinted at 138 Cong. Rec. 9981-82 (1992).

¹³ Letter of July 23, 1992 from Charles A. Bowsher, Comptroller General of the United States, to Senator Robert C. Byrd, chairman, Committee on Appropriations. This letter is reprinted at 142 Cong. Rec. 6513 (1996).

¹⁴ “The Line Item Veto,” hearing before the House Committee on Rules, 105th Cong., 2d Sess. 12 (1998). Testimony by June E. O’Neill, Director of the Congressional Budget Office.

concluded that the projects were not a priority at the time, (2) the projects did not make an immediate contribution to the housing, education, recreation, child care, health, or religious life of the military service, and (3) they would not have been built in fiscal year 1998 in any event.¹⁵

These justifications came under heavy fire. The Senate Appropriations Committee held hearings and took testimony from the Air Force, the Navy, and the Army. The military witnesses told the committee that the canceled projects were mission-essential and could be commenced in 1998.¹⁶ The Senate voted 69 to 30 to disapprove the cancellations. The House voted 352 to 64 for the disapproval resolution. President Clinton vetoed the resolution, but a strong bipartisan majority overrode him by the necessary two-thirds margin. The vote was 78 to 20 in the Senate and 347 to 69 in the House.

The Administration reversed itself on a cancellation that involved the federal retirement system, affecting employees who switched from the Civil Service Retirement System (CSRS) to the Federal Employees Retirement System (FERS). President Clinton stated that the action would save \$854 million over five years. Senator Ted Stevens, chairman of the Appropriations Committee, and Senator Pete Dominici, chairman of the Budget Committee, challenged the legal basis for the cancellation. Although it was reported as a cancellation of discretionary budget authority, they both agreed that the change in the FERS policy did not constitute “budget authority.” In fact, the Administration was unable to report estimated savings in budget outlays. As a substitute, it reported the FERS proposal as “receipt savings.”¹⁷ Administration officials later admitted that President Clinton did not have authority to cancel funds in the retirement program.¹⁸

Impact on Budget Priorities

Although many analysts do not view item-veto authority as an effective vehicle to achieve significant savings or deficit reduction, a number of studies indicate that governors use the item veto to favor executive priorities over legislative priorities.¹⁹ In 1995, during hearings on the Line Item Veto Act, Office of Management and Budget Director Alice Rivlin testified that granting the President an item veto would not have a large effect on the deficit: “I would think that it would be a relatively small proportion of discretionary spending that would be a candidate for a line-item veto.” She added: “I

¹⁵ *Weekly Compilation of Presidential Documents*, vol. 33, pp. 1501-02 (1997).

¹⁶ *Public Papers of the Presidents*, 1997, II, p. 1301; 143 Cong. Rec. 22133-34 (1997) (statement by Senator Ted Stevens).

¹⁷ 62 Fed. Reg. 54338 (1997).

¹⁸ Stephen Barr and Joan Biskupic, “Clinton Recants on Item Veto of Pension Switch,” *Washington Post*, Dec. 20, 1997, p. A1.

¹⁹ “Item Veto: State Experience and Its Application to the Federal Situation,” House Committee on Rules, 99th Cong., 2d Sess. (Comm. Print Dec. 1986).

don't believe that this would be a large dollar figure. It is likely to be a relatively small percentage of total spending."²⁰

At those same hearings, CBO Director Robert Reischauer agreed that the item veto would not produce much in savings. The more important impact would be in giving presidential spending a preference over congressional spending. Evidence at the state level, he said, "suggests that the item veto has not been used primarily to hold down overall State spending, but rather it has been used by governors to substitute their priorities for those of the legislatures." Experience at the national level convinced Reischauer that Presidents would seek item-veto authority to direct greater resources to their own spending agendas.²¹

Earlier, in House hearings in 1992, GAO Assistant Comptroller General Harry Havens testified about the likely effect of proposals to enhance the President's authority to cancel or refuse to spend appropriated funds. The greatest impact, he said, would not be in savings but rather in the balance of power between the legislative and executive branches. Various item-veto or rescission proposals "would represent a major shift of power from Congress to the President in an area that was reserved to Congress by the Constitution and which has historically been one of clear legislative primacy."²²

Joining Havens at those hearings, Reischauer testified that pressures for increased spending are as likely to come from Presidents as from lawmakers: "Recent history suggests that Presidents are not necessarily penurious and Congress is not necessarily fiscally profligate. The record for the past 16 years, which is roughly the period in which we have been terribly concerned about the deficit, shows that the Congress has appropriated less in discretionary spending than the President has asked for in 11 of those 16 years." Presidents who support reductions in one area "often are in favor of increases, or more than the Congress provides, in some other areas."²³

Conclusions

A restoration of item-veto authority for the President would not be expected to provide a substantial remedy for large budget deficits, particularly those in the neighborhood of \$400 billion that are currently projected. An item veto might produce a few billion dollars in savings in a fiscal year, but could quite possibly increase spending as a result of a quid pro quo between the branches. A significant issue relating to the item veto is whether it would give a preference to presidential priorities over congressional priorities, raising broader questions about the legislative power of the purse and principles of representative government.

²⁰ "Line Item Veto," joint hearings before the House Committee on Government Reform and Oversight and the Senate committee on Governmental Affairs, 104th Cong., 1st Sess. 57-58, 60 (1995).

²¹ Ibid., p. 62.

²² "Legislative Line-Item Veto Proposals," hearings before the House Committee on Rules, 102d Cong., 2d Sess. 274 (1992).

²³ Ibid., p. 258.