

CBO TESTIMONY

Statement of
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on the
Statutory Item Veto Proposals

before the
Committee on Governmental Affairs
United States Senate
and
Committee on Government Reform
and Oversight
U.S. House of Representatives

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NOTICE

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Chairman Roth, Chairman Clinger, and Members of both Committees, I am pleased to appear before you today to offer the views of the Congressional Budget Office (CBO) concerning proposals to grant the President the authority to target individual items in legislation for elimination or reduction. My testimony today will cover two subjects:

- o First, I will review the two most prominent statutory approaches to giving the President the item veto--enhanced and expedited rescission--discussing the changes that each would represent to current procedures.
- o Second, I will address three of the issues that these proposals raise--their likely effect on spending and the deficit, the concerns raised by applying the item veto to tax and direct spending legislation, and the possible effect of the item veto on the Congressional workload.

STATUTORY ITEM VETOES

Many Presidents have sought to increase their authority in the budget process by being permitted to reduce or eliminate specific items in appropriation bills while approving others, a power possessed by 43 of the 50 state governors. Those Presidents have argued that an item veto would empower them, as representatives of the general interest, to reduce low-priority or locally oriented--so-called pork-barrel--

projects that are enacted by the Congress. Many proponents of this change argue that the item veto would be a powerful tool in reducing the deficit.

If the item veto was enacted by amending the Constitution, it would give the President, when appropriation bills were presented to him by the Congress, the authority to veto particular portions of those bills, while approving others. For example, a President could approve portions of the appropriation bill covering the Departments of Commerce, Justice, and State and related agencies, while disapproving other portions. Those items not approved could only be restored by a two-thirds vote of both Houses of Congress.

Moreover, under the Constitutional amendment approach, the President's flexibility would be limited by the structure of the appropriation bill as enacted by the Congress. For example, if a bill making appropriations to the State Department included (among others) a lump-sum appropriation of \$20 billion for foreign aid, the item veto would give the President only two options: he could approve the whole \$20 billion or veto the item in its entirety. He could not reduce the amount to \$15 billion, or cut out only aid to a particular country, since the appropriation was not itemized in that way.

Most recent proposals, including those that are being considered by your two Committees, do not recommend giving the President the item veto by amending the

Constitution. Rather, they recommend that the item veto be enacted statutorily. Those statutes would not give the President the option of approving portions of appropriation bills while disapproving others at the time that those bills were presented to him for signature. Instead, they would expand his power to rescind funds after they are appropriated or to change other laws by amending the current processes for rescinding appropriated funds created by the Congressional Budget and Impoundment Control Act of 1974.

The Impoundment Control Act permits the President to propose a rescission (in effect, a cancellation of an appropriation) of any funds that the Congress has appropriated. If the President's proposed rescissions have not been enacted into law within 45 days of continuous session, the funds identified in the proposed rescission must be released for obligation, permitting agencies to spend them. Further, if a President proposes rescissions and the appropriations committees fail to report a rescission bill at the end of 25 calendar days, the bill can be taken directly to the floor if one-fifth of the Members of each chamber desire such a discharge.

Rescission procedures need not be initiated by the President. Nothing in the law prevents the Congress from initiating rescissions, or limits the Congress to considering only the President's proposals. In fact, from 1974 through 1992, the executive branch requested \$69.2 billion in rescissions. Although the Congress

approved only \$21.3 billion of those specific rescissions, it initiated another \$65.1 billion for a total of \$86.5 billion.¹

The two most prominent recent statutory versions of the item veto--the so-called expedited rescission approach and the enhanced rescission alternative--are variations on these existing procedures. The approaches differ primarily in the extent to which they provide the President with additional authority to pursue his budgetary priorities. Expedited rescission requires the Congress to vote on Presidential rescission proposals, while enhanced rescission places the burden squarely on the Congress to disapprove Presidential rescissions in order to prevent them from becoming law.

Expedited Rescission

Expedited procedures for considering Presidential rescission proposals were first considered by the 102nd Congress. In the closing days of that Congress, the House of Representatives passed a bill that would have required the Congress to act on Presidentially proposed rescissions within a specified number of days of the proposals. If either House disapproved, funds would be released for obligation. That

1. These figures are quoted from Louis Fisher, "Impoundment Reform Proposals: Rescissions and Item-Veto Authority," *CRS Report for Congress* (Congressional Research Service, October 25, 1994), p. 2.

change, in effect, would have given the President a guarantee that his proposals would not be ignored. As with existing rescission procedures, the Congress could have initiated its own set of rescissions at any time.

During the 103rd Congress, two separate expedited rescission bills--H.R. 1578 and H.R. 4600--passed the House. The second of these bills would have expanded the expedited procedures to cover not only appropriation bills but tax legislation as well. The President could strike "targeted tax benefits," representing provisions in tax bills that provide benefits to a limited class of taxpayers. Expanding the approach to include tax bills was designed to focus attention not only on spending for narrow interests created through appropriation bills, but also on similar provisions inserted in tax bills.

In the 104th Congress, S. 14 (sponsored by Senator Domenici and five co-sponsors) would create expedited procedures for considering repeal or rescission of so-called budget items, including proposed rescissions, repeals of targeted tax benefits (defined in this bill as a provision in tax law having the practical effect of benefiting particular taxpayers or a limited class of taxpayers), or repeals of amounts of direct spending. Although both rescissions and tax benefits were the focus of earlier legislation (particularly H.R. 4600, as noted above), S. 14 represents the first attempt to expand the definition to include direct or mandatory spending (including entitlements). Under this approach, the President would be permitted to get fast-

track consideration for proposals to repeal particular amounts of direct spending, if he decided that he did not support those amounts after having approved the bill creating that direct spending. The new procedures under S. 14 would not be a permanent change. They would cease on September 30, 1998.

Enhanced Rescission

Enhanced rescission represents a much greater shift of power from the legislative to the executive branch than does expedited rescission. Under the current process, a proposed rescission is null and void if not acted on by the Congress within a specified period. Enhanced rescission, however, allows Presidential proposals to become law unless specifically overturned by the Congress.

Under such procedures, if the President proposed a set of rescissions, they would automatically take effect unless the Congress passed a "rescission disapproval bill," which the President would then presumably veto (to protect his proposed rescissions). The Presidential veto of a rescission disapproval bill--as for any other bill--could only be overridden by a vote of two-thirds of the Members of both Houses. In effect, therefore, enhanced rescission would give the President the authority to cancel any item that he wished, as long as he could convince more than one-third of the Members of either House to go along with him.

Furthermore, enhanced rescission would provide the President with greater potential power than a constitutionally approved item veto. As noted above, a constitutional amendment would limit the President to approving or vetoing line items according to the manner in which the Congress structured a given appropriation bill. He would have no authority to reach within a line item to cut a specified project or to reduce budget authority within a line item (many projects are actually specified only in the report language accompanying the bills). Enhanced rescission, however, would empower the President to define a line item as any portion of an appropriation enacted into law. In fact, because enhanced rescission would permit the President and one-third of either House to eliminate or reduce funding for a given item, it is equivalent to some of the strongest item veto powers possessed by state governors. Such "reduction veto" authority is possessed by chief executives in only 11 states.

Two of the most prominent current proposals are variations on enhanced rescission. S. 4 (introduced by Senator Dole and nine cosponsors) is a traditional approach to enhanced rescission in that it applies only to appropriation bills. H.R. 2, sponsored by Representative Clinger and patterned after language accompanying the "Contract with America," is identical in its approach to appropriated spending, but it also would apply the approach of enhanced rescission to "targeted tax benefits." The bill defines such tax benefits more narrowly than does S. 14. Included would be provisions that the President determines would affect five or fewer taxpayers. Each of those two approaches would provide for Presidential rescissions (or repeals of tax

benefits) to take effect unless specifically disapproved by the Congress, and both would make those procedural changes permanent.

ISSUES RAISED BY EXPEDITED AND ENHANCED RESCISSION

Both expedited and enhanced rescission would represent a shift of power from the Congress to the President. As noted above, enhanced rescission would represent a greater power shift than expedited rescission. In fact, enhanced rescission has the potential to increase the President's power even more than a constitutional amendment. The power created would be even greater if it applied to tax bills in addition to appropriation bills. Although expedited rescission is less of a shift of power (primarily because it does not require a supermajority to override a Presidential proposal), it would enable Presidents to expand their power to set the Congressional agenda.

Aside from the shift in power, however, the statutory versions of the item veto raise other issues that warrant consideration. I will highlight three of them: the probable effect on federal spending and the deficit, the difficulty of expanding the process of canceling budget items to include tax and direct spending legislation, and the possible effect of the item veto on the Congressional workload.

The Effect of the Item Veto on Spending and the Deficit Is Unclear

Proponents of the item veto often tout it as a tool that could offer substantial assistance in reducing federal spending and the budget deficit. Reducing the deficit is the most important action that could be taken to increase long-term living standards, but the potential for the item veto to decrease the deficit is uncertain.

Evidence from the states suggests that the item veto has not been used to hold down state spending or deficits, but rather has been used by state governors to pursue their own priorities. Researchers have reviewed the impact of state item vetoes through case studies of individual states, surveys of multiple states, and statistical techniques. For example, a study of the use of the item veto in Wisconsin over a 12-year period found that governors were likely to use the authority to pursue their own policies or political goals but not to reduce spending.² Similarly, a comprehensive survey of state legislative budget officers found that governors were likely to use the item veto for partisan purposes (for example, Democratic governors vetoing projects enacted by Republican legislators), but were unlikely to use the veto as an instrument of fiscal restraint.³ Finally, several researchers have used statistical models to test the effect of the item veto, and few

2. James Gosling, "Wisconsin Item Veto Lessons," *Public Administration Review*, vol. 46 (July/August 1986), pp. 292-300.

3. Glenn Abney and Thomas Lauth, "The Line-Item Veto in the States: An Instrument for Fiscal Restraint or an Instrument for Partisanship?" *Public Administration Review*, vol. 45 (May/June 1985), pp. 372-377.

have found support for the contention that the veto reduces state spending.⁴

Although the item veto may affect state budgets, it is more likely to substitute the governor's priorities for those of the legislature than it is to reduce spending.

The item veto at the federal level could decrease spending and the deficit in cases in which the President cared more about reducing spending or the deficit than he did about pursuing his own spending priorities. That outcome could occur in two ways. The first is obvious: selected provisions that could not gain support (majority in the case of expedited rescission or supermajority in the case of enhanced rescission) in both Houses would be reduced or deleted without causing anything to be added to the budget, thus reducing the deficit. In addition, the President could use the threat of an item veto to bargain with the Congress, encouraging it to adopt a broad package of deficit reductions in exchange for a pledge not to single out items that some Members support.

If the President did not give top priority to spending cuts or deficit reduction, however, the situation could be much different. Recent experience suggests that even Presidents who support reductions in one area of the budget may favor increases in others. In that case, the President would be unlikely to target

4. See, for example, David C. Nice, "The Item Veto and Expenditure Restraint," *Journal of Politics*, vol. 50, no. 2 (May 1988), pp. 487-499; and Douglas Holtz-Eakin, "The Line Item Veto and Public Sector Budgets: Evidence from the States," *Journal of Public Economics*, vol. 36 (August 1988), pp. 269-292. For a study that finds a restraining influence, see W. Mark Crain and James C. Miller III, "Budget Process and Spending Growth," *William and Mary Law Review*, vol. 31, no. 4 (Spring 1990), pp. 1021-1046.

items for reduction or elimination in areas of the budget that he supported. He could also use the threat of an elimination or reduction to win votes for the provisions that he supported. That approach could lead to an increase in total spending and the deficit rather than a decrease.

Some evidence at the state level also indicates that gubernatorial item vetoes may encourage some state legislatures to shift responsibility. Since many state legislatures know that their governors are likely to use the veto to ensure the enactment of a balanced budget, they have an incentive to enact appropriation bills in excess of what they know to be affordable, thus shifting the burden of cutting spending from the legislature to the governor. It is useful to consider whether that incentive might surface in the Congress, particularly under the budget tightening that might occur if the Congress was to approve, and the states were to ratify, a balanced budget amendment.

Under any scenario, expedited rescission would probably pave the way for replacing some Congressional budget priorities with Presidential ones. A number of analysts argue that that is a sufficient reason to adopt the procedure. Under such an argument, the effects of expedited rescission on overall spending and the deficit might be considered to be less important if they were successful in eliminating Congressionally induced spending that has a narrow focus (or, in the case of tax bills, targeted tax benefits). For example, the President could raise the

visibility of specific proposals, including pork-barrel items, by forcing debate and votes on a selected number of spending items (or tax benefits). Such increased attention might result in those items being deleted from bills for fear of later embarrassment by a proposed rescission. But note that the process would only affect narrow-interest provisions passed by the Congress. Presidents have broad discretion in the spending of certain appropriated funds, and they have been known to allocate a portion of those funds toward narrow constituencies. The item veto would not directly undercut that practice.

Under some approaches (such as the enhanced rescission process created by S. 4, as discussed above), the item veto would apply only to the one area of the budget (namely, discretionary spending) that is, comparatively speaking, under control. Discretionary spending has been declining as a percentage of gross domestic product (GDP) in recent years, largely because of the statutory caps that have existed since fiscal year 1991. Those caps freeze discretionary spending in nominal terms through fiscal year 1998. Mandatory spending, however, has been increasing as a percentage of GDP, fueled by the rapid growth in health care costs. CBO estimates that health care spending will continue to grow much more rapidly than GDP into the next century. For that reason alone, if an item veto was enacted that applied only to discretionary spending and if the discretionary caps were extended, its effects might necessarily be limited.

Applying the Item Veto to Tax and Direct Spending
Legislation Raises Implementation Problems

Largely because of the limitations of a line-item veto that applies only to appropriation bills, some bills (such as H.R. 2 and S. 14) apply expedited or enhanced rescission procedures to other parts of the budget, such as tax bills and direct spending. Proponents of such measures hope to give the President the authority to target other areas of the budget--specifically, revenue or direct spending provisions--for reduction or elimination.

Although the approach is appealing because of its broad coverage, it has inherent limitations as well. It is particularly difficult to define the type of tax benefit that such a provision is designed to reduce. That is, proponents of applying enhanced (as in H.R. 2) or expedited (as in S. 14) procedures to tax bills have in mind the elimination of narrow-interest tax breaks, which allegedly surface in tax bills, sometimes very late in the process. But recognizing the problem may be much easier than devising a workable definition.

Consider the two definitions of the term "targeted tax benefit" included in the above-mentioned bills. In the case of the expedited rescission proposal (S. 14), a targeted tax benefit is defined as a provision that "has the practical effect of providing a benefit in the form of a different treatment to a particular taxpayer or

a limited class of taxpayers" (excluding differences based on income, marital status, or number of dependents). Based on that definition, however, there is apparently little distinction between targeted tax benefits and "tax expenditures" as defined by the Congressional Budget Act of 1974. Such provisions affect millions of taxpayers. For example, the definition of targeted tax benefits seems broad enough to apply to many current itemized deductions under the personal income tax, such as the home mortgage interest deduction, and to business tax preferences, such as the research and experimentation credit.

Alternatively, H.R. 2 defines a targeted tax benefit as "any provision of a revenue Act which the President determines would provide a federal tax benefit to 5 or fewer taxpayers." Clearly this definition is much narrower than that in S. 14, although one could imagine ingenious ways to get around such a requirement. One obvious way is to ensure that such provisions apply to at least six taxpayers. That would be easy enough to do so as to make the application of such procedures to tax bills effectively meaningless. In any case, the President would have broad authority to decide whether he believed that a particular provision met a given definition, and the Congress would have no standing to challenge his judgment.

The fundamental problem created by efforts to apply the item veto to direct spending concerns the incompatibility created between the creation of rights (or entitlements) to benefits on the one hand, and the possible elimination of funding

on the other. Unless the President is given the authority to recommend changes in law concurrently with the "item veto" of direct spending (a power that S. 14, as drafted, would not give him), simply repealing or reducing an "amount" seems insufficient. Unlike appropriation bills, direct spending bills usually do not provide specific amounts of funding. Rather, they set the terms and conditions for funding. For example, if the President recommended the repeal of an amount of Social Security spending but did not change the criteria for eligibility or benefit levels associated with Social Security, the result would be unworkable and ultimately not have the effect of reducing spending on the program. Moreover, even if underlying law could be changed, the item veto would presumably apply only to legislated expansions creating increases in direct spending. By far the greatest increases in direct spending result not from such legislated changes, but from previously existing provisions of law that would be unaffected by the item veto.

The Item Veto Is Likely to Add to the Congressional Workload

Any procedural change that requires the Congress to take an action that it can now avoid has the potential to increase the workload of the Congress. Providing the President with the authority to force a vote on individual items (appropriations, direct spending, or taxes) could prompt a substantial amount of legislative activity

in each House. Such an increase in Congressional workload could eat up many hours of floor time. S. 14 does take that concern into account. For example, it includes procedures that would limit debate and the use of motions to strike proposed items from the bill. Conversely, subjecting direct spending and taxes to expedited procedures greatly increases the potential for more such items that need to be considered on the House or Senate floor.

Enhanced rescission proposals do not necessarily imply the same workload demands on Congressional activity as expedited rescission. They do not require votes on Presidential proposals, since these proposals could become law without Congressional action. But if the Congress was interested in protecting its own spending priorities from a hostile President, even enhanced rescission could result in a substantial increase in floor activity, if only through attempts to override Presidential vetoes of rescission disapproval bills.

CONCLUSION

The item veto is most appropriately viewed as a shift in power from the legislative to the executive branch. However, the power shift would not necessarily lead to less spending or lower deficits. Simply put, the item veto is a tool for fiscal

restraint only in the hands of a President who places a top priority on reducing spending and the deficit.

Despite limited potential for reducing spending and the deficit, the item veto might be warranted if substituting Presidential priorities for Congressional priorities resulted in less low-priority spending or fewer tax breaks. In fact, the strongest case for the item veto relies on a belief that Presidents can identify provisions with purely local benefits and are willing to act against them without substituting their own budget priorities. The extent to which that belief is true depends heavily on the desires of an individual President. It also depends on whether Presidents would use their new powers to achieve policies that are in the larger public interest, as opposed to their own narrow interests.

The alternative, of course, would be for the Congress and the President not to pursue narrow-interest policies to begin with. However, if that is not going to occur (and narrow-interest provisions may indeed be a necessary part of the legislative process), the argument over the item veto should really turn on the desirability of the President's priorities versus those of the Congress, not on the probability that the item veto would be a major tool for deficit reduction.

In short, those who believe that Presidents need a great deal more leverage to pursue their priorities should favor enhanced rescission. Those who do not

should favor something more like expedited rescission or should seek no change to existing procedures.

