

Testimony of
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Line-Item Veto: Perspectives on Applications and Effects
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Mr. Chairman, Congressman Spratt, and Members of the Committee, I appreciate the opportunity to appear before the Committee on the Budget today to discuss the line-item veto legislation proposed by the president and various members of Congress. I am currently a Senior Fellow at the Center on Budget and Policy Priorities, a nonpartisan policy and research institute, which receives no grants, contracts, or other funding from the government. Before going to work at the Center, I spent more than twenty years working in the Legislative Branch, as a staffer at the House Budget and House Rules Committees, the Senate Budget Committee, the Government Accountability Office, and the Congressional Budget Office.

I want to divide my testimony today into two parts. First, I want to discuss what I consider the fundamental problems with granting the president — any president — line-item veto or expedited rescission powers. Then I would like to discuss some of the issues raised by the particular legislation proposed by the president and introduced in the House as H.R. 4890 by Congressman Ryan. With the permission of the Committee, I would also like to submit for the record a paper written by my colleague at the Center on Budget, Richard Kogan, entitled “Proposed Line-Item Veto Legislation Would Invite Abuse by Executive Branch.” That paper goes into more detail about the matters I will discuss in my testimony.

The most fundamental aspect of any line-item veto proposal is to shift power from the legislative branch to the executive branch. Whether because of a career spent primarily working for the legislative branch (although that ensures I know the shortcomings of Congress all too well) or my basic regard for the wisdom of the founding fathers in balancing powers in our government, I am troubled by the idea of further enhancing the power of the executive branch. I agree with columnist George Will, who has written that “The line-item veto’s primary effect might be political, and inimical to a core conservative value. It would aggravate an imbalance in our constitutional system that has been growing for seven decades: the expansion of executive power at the expense of the legislature.”

I could understand, however, how even some who share my concern about shifting power to the executive branch in general might believe that giving the president line-item veto authority would still be worthwhile if it were likely to significantly help in bringing our long-term deficit problem under control. But I do not believe that giving the president line-item veto authority is likely to produce that result.

First of all, a line-item veto is not well-suited to getting at the biggest cause of our real, long-term budget problem. That long-term problem is posed primarily by the fact that under current policies the cost of three big entitlement programs — Social Security, Medicare, and Medicaid — are projected to grow at a rate that will exceed the growth of the economy and revenues, leading to ever

higher deficits, borrowing, and debt unless the policies guiding those programs and taxes are changed. Because those entitlement programs and revenues are generally governed by permanent law, the line-item veto — which provides only the opportunity to modify new legislation — is not a tool that can be used to make changes in the underlying laws governing entitlements and taxes (and, as I will discuss shortly, the ability to use the proposed line-item veto even to make changes in new tax legislation is very limited).

As a result, the potential effect of the line-item veto is to a large extent limited to the one-third to two-fifths of the budget determined through annual appropriation legislation. That is, of course, still a large enough portion of the budget to be concerned about, and if the line-item veto offered a realistic chance of limiting unwise spending in that area, it might still be worth trying. But I think that the line-item veto is unlikely to have that effect.

The success of the line-item veto in limiting unwise discretionary appropriations depends on the president using the authority solely or primarily to eliminate such unwise spending, as opposed to using the authority as leverage to gain support in Congress for any number of policies he is pursuing. But why should we expect that a president would not use this power to help him achieve a variety of goals; for instance, to promise a legislator that he will not veto an item favored by that legislator in return for a vote on a judicial nominee or a trade pact supported by the president. Norman Ornstein, the noted Congressional scholar at the American Enterprise Institute, concludes that the line-item veto “gives the president a great additional mischief-making capability, to pluck out items to punish lawmakers he doesn’t like, or to threaten individual lawmakers to get votes on other things, without having any noticeable impact on budget growth or restraint.”

And, it is far from certain that any effect that the line-item authority might have on the budget would be to restrain spending. For instance, a president could promise not to veto a particular item in return for the sponsor of that item agreeing to support new spending or tax cuts proposed by the president that far exceed the cost of items the president might consider vetoing. It is not unlikely that giving the president line-item veto authority would actually *increase* spending and deficits compared to what would occur without the line-item veto.

We at the Center on Budget are not the only ones who think this is a possibility. Acting Congressional Budget Office Director Donald Marron, for instance, told the Senate Budget Committee earlier this month that “the Congress might accommodate some of the president’s priorities in exchange for a pledge not to propose rescission of certain provisions, thereby increasing total spending. As CBO has previously testified, studies of the line-item veto at the state level have documented similar devices employed by state legislatures over the years....”

Columnist George Will also concluded that the line-item veto might not have the desired effect of reducing spending, explaining: “Arming presidents with a line-item veto might increase federal spending, for two reasons. First, Josh Bolten, director of the Office of Management and Budget, may be exactly wrong when he says the veto would be a ‘deterrent’ because legislators would be reluctant to sponsor spending that was then singled out for a veto. It is at least as likely that, knowing the president can veto line items, legislators might feel even freer to pack them into legislation, thereby earning constituents’ gratitude for trying to deliver. Second, presidents would buy legislators’ support on other large matters in exchange for not vetoing the legislators’ favorite small items.”

I would imagine that reasonable people could have different views about how president George W. Bush might use the line-item veto, but I wonder how many people would be willing to argue that giving line-item veto authority to a president like Lyndon Johnson would reduce spending.

Let me turn now to a few of the problems that are presented by the particular version of the line-item veto proposed by the president.

First are issues related to the submission of the president's proposed rescissions. Under the administration's proposal, the president would have enormous flexibility as to when he can submit proposed rescissions and how he could package his rescissions. For instance, the president would be able to propose to rescind a discretionary appropriation at any time as long as the funds appropriated remain available for obligation. For multi- or no-year appropriations that remain available for obligation for more than one fiscal year, the president could even wait several years after an appropriation is enacted before proposing the rescission. For entitlement program increases or targeted tax provisions, the president could submit a veto proposal any time after legislation is enacted and before his next budget is submitted. Furthermore, the president would be able to submit multiple rescission bills for any single appropriation, entitlement, or tax bill, or to submit a proposed rescission bill that includes rescissions of items from any number of different bills (combining, for instance, rescissions of discretionary appropriations, entitlement increases, and tax provisions in the same rescission bill). The Congress would then have to consider, but would not be able to amend or modify in any way, each of the bills the president submits. This gives the president the ability to affect the Congressional legislative agenda to a far greater degree than he currently can.

Second, and perhaps more importantly, the administration's proposal would effectively allow the president to permanently rescind discretionary funding even if the Congress votes down his proposed rescission legislation. Under the administration's proposal, discretionary funds the president proposes to rescind can be withheld for up to 180 days after the president submits his rescission to the Congress, even if the bill proposing to rescind the funds is defeated by the Congress within days of being submitted. In the case of appropriations that are only available for one fiscal year, the president could wait until April 1 to submit rescission legislation and then withhold funds proposed for rescission in that bill until the end of the fiscal year, at which time the funds expire. Thus, whatever action the Congress takes on the proposed rescission legislation, the funds would be cancelled.

It is not necessary to have this 180-day withholding period in order to ensure that Congress could not put off voting on the rescission package and still secure release of funds proposed for rescission by taking an extended recess until the withholding period has passed. The simplest way to achieve this without allowing the president to withhold funds long after the Congress has voted against his proposed legislation would be to require the president to release the funds as soon as either House votes against the rescission package, but that approach might run afoul of the Supreme Court's decision that a one-House veto is unconstitutional. But it is also possible to achieve the desired result by calculating the period for which the president can withhold funds on the same basis as the period during which Congress has to consider the proposed rescission package, with the withholding period extending a few days beyond the Congressional deadline. The administration's proposal requires the House and the Senate to vote on the rescission package within 13 days of session after receiving the president's proposed rescission package. If the president were allowed to withhold funds proposed to be rescinded for 15 days of session of the House or 15 days of session of the Senate, whichever is longer, then Congressional action would have to be completed before the

president would be required to release the funds (assuming Congress did not pass the rescission bill). If Congress delayed acting on the rescission bill by taking an extended recess, the withholding period would be extended by the length of that recess.

Finally, I want to briefly address concerns about the way the administration's proposed line-item veto procedures would apply to new entitlement legislation and to "targeted tax benefits" included in new tax legislation. The president would be allowed to propose to cancel or scale back proposed increases in entitlement spending contained in new legislation. Since many entitlement increases occur as a result of making additional categories of people eligible for benefits or increasing benefits by changing formulas that determine them, the authority to scale back a new entitlement increase appears to give the president the ability to change entitlement laws in ways the Congress never anticipated in drafting the legislation. For instance, if Congress created a Medicare "buy in" option for uninsured people between the ages of 62 and 65, the president might be able to use the authority granted by the line-item veto proposal to scale back the entitlement increase by raising the buy-in age to 63 for some types of people and to 64 for others, even if Congress had not created any such distinction between eligible individuals.

In contrast, the administration's proposal would only allow the president to cancel, but not scale back, targeted tax benefits. More troubling is the fact that targeted tax benefits are defined — as they were in the 1996 line-item veto legislation — so narrowly that it appears Congress could design special-interest tax breaks so that they would be exempt from any possible presidential rescission. Only measures providing tax breaks to 100 or fewer beneficiaries can be considered as targeted tax breaks, and further restrictions on the definition led the Joint Committee on Taxation to conclude in 1996 that tax benefits could generally be drafted in ways that would make them exempt from the presidential line-item veto, even if they were targeted to 100 or fewer people.

Note that the proposed line-item veto procedure would establish unequal treatment of entitlement increases and tax breaks. The president could use the proposed line-item procedure to force a vote on the cancellation of an entitlement improvement that would benefit millions of people, but would not be able to force a vote on a tax break if it benefited as few as 101 people. This is despite the finding by the Joint Committee on Taxation, the Government Accountability Office, and former Federal Reserve Chairman Alan Greenspan that many tax breaks are analogous to entitlement programs and are properly thought of as "tax expenditures" or "tax entitlements."

In conclusion, there are a number of troubling aspects of the particular line-item veto plan proposed by the administration, but even if such flaws as the 180-day withholding period were corrected, I believe the fundamental problem with any line-item veto proposal — the shift in power from the Congress to the president without any real likelihood that the shift will improve budget outcomes — should deter Congress from enacting a such a plan.