

Statement of Edward Lorenzen

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House Committee on the Budget

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Background

Chairman Nussle, Congressman Spratt, and members of the Committee, thank you for inviting me to discuss the President's modified line item veto proposal. I am the National Policy Director for The Concord Coalition, a nonpartisan organization with approximately 200,000 members who hail from every state who have consistently urged Washington policymakers to strengthen the nation's long-term economic prospects through sound and sustainable fiscal policy. The Concord Coalition receives no grants, contracts, or other funding from the government. Before going to work at Concord, I spent nearly fifteen years working on Capitol Hill, primarily as an aide to former Congressman Charlie Stenholm. In that capacity I had the privilege of working with several members of the Committee as well as both the Democratic and Republican staff of the committee.

Concord's co-chairs are former senators, Warren B. Rudman (R-NH) and Bob Kerrey (D-NE). The Concord Coalition has worked for fourteen years since the organization's founding by Paul Tsongas, Warren Rudman, and Peter G. Peterson in 1992 to help build a political climate that encourages elected officials to make the tough choices required to:

- Balance the federal budget
- Keep it balanced on a sustainable basis, and
- Prepare for the fiscal and economic challenges that will occur as the nation's population becomes sharply older in coming decades.

Given these objectives, The Concord Coalition is encouraged by encouraged by the growth in the awareness of our fiscal challenges on the part of the public and policymakers. The Concord Coalition has organized The Fiscal Wake Up Tour, a series of public forums around the country designed to focus attention on our nation's daunting long-term fiscal challenges. The purpose of this new issue-oriented grassroots project is to draw attention to the simple fact that, according to analysts of diverse political views, current fiscal policy is unsustainable and hard choices must be made to set things right. To that end, we have joined forces with speakers from the Brookings Institution, the Heritage Foundation, the Committee for Economic Development the Committee for a Responsible Federal Budget and other organizations who may differ on proposed solutions but who all agree on the magnitude of the problem and the need for serious action. Our purpose is not to cast blame but to give the public a better idea of how serious the long-term fiscal problem is; why there is no free lunch, and what the realistic trade-offs are.

We are taking this message across the country because better public awareness of the problem is the first step in finding solutions that are both acceptable and meaningful. Without greater understanding of the problem among the public, community leaders, business leaders and home state media, elected leaders are unlikely to break out of their comfortable partisan talking points. In our Wake Up Tour events we explain the greater context for today's fiscal policy debates, including: changing demographics; inadequate national savings; intractable health care costs; the crowding out of discretionary spending on everything from defense to education; and ultimately growing deficits and debt that is simply unsustainable.

Under realistic estimates, deficits will remain near or above \$300 billion for the rest of the decade. Analysts of diverse ideological perspectives and nonpartisan officials at the Congressional Budget Office (CBO) and the Government Accountability Office (GAO) have all warned that current fiscal policy is unsustainable over the long-term.

Dealing with these fiscal challenges will require a comprehensive look at all parts of the budget. As the Concord Coalition board said in a recent New York Times Ad:

“If everyone insists on only cutting someone else's priorities, talk about deficit reduction will remain just that. The best way to end this standoff is to agree on the common goal of deficit reduction, put everything on the table—including entitlement cuts and tax increases—and negotiate the necessary trade-offs...Unfortunately, actions have been wanting. Leaders must put the national interests ahead of partisan or parochial interests and develop a specific and realistic plan to put the country on a sustainable long-term fiscal path.”

The Role of the Line Item Veto in Addressing Fiscal Problems

One of the cornerstones of the administration's effort to restore fiscal discipline is the proposal for a line item veto “that would withstand constitutional challenge.” The proposal would give the President the authority to defer new spending whenever he “determines the spending is not an essential Government priority.”

The Concord Coalition believes that the proposed modified line item veto could have a positive impact on the budget process. Strengthening the rescission process as this proposal does would bring greater accountability to the budget process so that individual appropriations and tax items may be considered on their individual merits. The current rescission process does not make the President or Congress accountable. Congress can ignore the President's rescissions, and the President can blame Congress for ignoring his rescissions.

This reform will not make a significant dent in our deficit. But it will have a very real cleansing effect on the legislative process and will take a step toward reducing the public cynicism about the political process. Granting the President modified line item veto authority would send a signal to the public that politicians in Washington are willing to set aside narrow parochial interests and make hard choices for the common good.

Restoring public confidence in the budget process is an important step in gaining the support that will be necessary to make the difficult choices required to address our fiscal challenges. On the Fiscal Wake Up Tour we have found that even after we present information regarding the magnitude of our fiscal challenges and point out that pork barrel spending pales in comparison to the rapid growth in entitlement spending, audience members still feel strongly about the need to cut out wasteful spending. It is not that they believe that the budget can be balanced by eliminating waste, fraud and abuse. The audiences at Wake Up Tour events understand that addressing our fiscal problems will require tough choices restraining entitlement spending or increase revenues and are willing to accept the necessary sacrifices. But before they accept sacrifices in terms of lower entitlement benefits, reduced services or higher taxes they want to be assured that those savings will go toward the greater good of balancing the budget and not diverted to special interest spending or tax items.

Although Concord supports granting the President additional authority to root out low-priority spending, we do not believe this proposal by itself will have a significant impact on budgetary outcomes. The spending and tax items that would be affected by these provisions represents a relatively small piece of the budget. Moreover, President Bush has never used his authority under current law to submit rescissions of earmarks or other spending he considers low priority, so it is unclear whether granting him this additional authority would have much of an impact at all.

According to the House Appropriations Committee, appropriations earmarks totaled \$17 billion last year. Other studies have produced somewhat higher numbers, perhaps as high as \$30 billion. The cost of earmarks in authorizing measures such as the highway bill and special interest tax provisions in tax legislation undoubtedly add to this cost. But even under the most optimistic of estimates the potential savings from reducing or even eliminating so-called “pork barrel spending” would not remotely begin to address the magnitude of our fiscal problems.

In 2005, the government spent \$2.47 trillion and ran a deficit of \$318 billion. If Congress had been required to balance the budget without raising taxes, it would have had to enact a 14 percent cut in all federal programs — not an easy task. But if Social Security, Medicare and Medicaid were exempted, the cut would have to be 25 percent. Nobody would suggest such a thing, but these numbers demonstrate that exempting popular programs from fiscal scrutiny is not a viable strategy for balancing the budget and that simply cracking down on everyone’s favorite target of “waste, fraud and abuse,” is not enough to get the job done.

Modified line item veto authority would do nothing to address the underlying structural deficit problems resulting from existing tax and entitlement laws. Moreover, the legislative actions which have the greatest impact on the deficit are expansions of entitlement programs or tax cuts that go well beyond the special interest provisions that this legislation would address. The Concord Coalition strongly supports reinstatement of budget enforcement rules for all tax and spending legislation that would increase the deficit as well as mechanisms which would force Congress to address existing structural fiscal problems.

Brief History of Modified Line Item Veto Proposals

Under Title X of the Budget Control and Impoundment Act, the President may propose to rescind all or part of any item at any time during the fiscal year. If Congress does not take action on the proposed rescission within 45 days of continuous session, the funds must be released for obligation. Congress routinely ignores Presidential rescissions. The discharge procedure for forcing a floor vote on Presidential rescissions is cumbersome and has never been used. Most Presidential rescission messages have died without a floor vote.

The modified line item veto proposal proposed by President Bush embodies the approach of legislation passed by the House of Representatives in 1993 and 1994 requiring Congress to vote up or down by majority vote on rescissions submitted by the President. This approach, known as “expedited rescission authority” or “modified line item veto,” has received support from members on both sides of the aisle over the years. In the early 1990’s, then Congressman Tom Carper worked with former Congressmen Dick Arney, Tim Johnson and others to find a bipartisan agreement on consensus legislation establishing expedited rescission authority. The House of Representatives overwhelmingly approved this consensus language in October of 1992.

The legislation was introduced in the 103rd Congress by former Congressman Charlie Stenholm, for whom I had the honor of working from 1990 through 2004. The House of Representatives passed a version of this legislation in April of 2003 with several modifications and improvements made in cooperation with Congressman Spratt based on consultations with leaders of the Appropriations Committee, the Clinton administration and other Members. The House again passed an expedited rescission proposal authored by Congressman Stenholm and former Congressmen Tim Penny and John Kasich in July of 1994.

Enactment of the Line Item Veto in 1996 made expedited rescission a moot issue in Congress. Congress rejected proposals to provide expedited rescission authority as a fallback option if full line item veto authority was struck down. There was little interest in the issue immediately following the Supreme Court decision striking down the Line Item Veto law, perhaps because the budget was in surplus. However, the proposal resurfaced last year when Congressman Paul Ryan offered an amendment granting the President expedited rescission authority. This approach has now been embraced by President Bush.

Having been involved with most of these previous legislative efforts to enact expedited rescission authority similar to the President’s proposal, I thought it might be useful to discuss some of the differences between these previous proposals and the legislation currently before the committee as well as other issues the Committee may want to consider in marking-up the legislation.

Previous expedited rescission bills were carefully crafted to comply with the Constitutional requirements established by the courts in *I.N.S. v. Chada*, 462, U.S. 919 (1983), the case that declared legislative veto provisions unconstitutional. Legislative vetoes allow one or both Houses of Congress (or a Congressional committee) to stop executive actions by passing a resolution that is not presented to the President. The *Chada* case held that legislative vetoes are unconstitutional because they allow Congress to exercise legislative power without complying

with Constitutional requirements for bicameral passage of legislation and presentment of legislation to the President for signature or veto. Unlike the line item veto law struck down by the Supreme Court, the expedited rescission approach meets the *Chada* tests of bicameralism and presentment by requiring that both chambers of Congress pass a motion enacting the rescission and send it to the President for signature or veto, before the funds are rescinded. Expedited rescission does not provide for legislative review of a preceding executive action, but expedited consideration of an executive proposal. Thus, it represents a so-called 'report and wait' provision that the Court approved in *Sibbach v. Wilson and Co.*, 312 U.S. 1 (1941) and reaffirmed in *Chada*.

The ability to withhold funds for proposed rescissions

The most significant difference between H.R. 4890 and previous expedited rescission proposals is the provision in H.R. 4890 allowing the President to withhold funds for items in a rescission package for 180 days. The language appears to allow the President to withhold funds even if Congress has already voted to reject the proposed rescission. This could be viewed as an effective grant of presidential authority to cancel provisions of law that was proscribed by the Supreme Court in *Clinton v. City of New York*, 524 U.S. 417 (1998), the decision striking down the Line Item Veto Act.

Previous expedited rescission proposals included language making it clear that the President could not withhold funds or delay implementation of a tax provision after Congress has rejected the proposal. I would strongly encourage the Committee to replace the provision in H.R. 4890 allowing the President to withhold funds for 180 days with the following language that was included in all previous expedited rescission proposals:

() REQUIREMENT TO MAKE AVAILABLE FOR OBLIGATION-

`(1) Any amount of budget authority proposed to be rescinded in a special message transmitted to Congress under subsection (b) shall be made available for obligation on the day after the date on which either House rejects the bill transmitted with that special message.

`(2) Any targeted tax benefit proposed to be repealed under this section as set forth in a special message transmitted by the President shall not be deemed repealed unless the bill transmitted with that special message is enacted into law.

There was some question in the past about whether the President would be allowed to withhold funds if Congress ignored or waived the requirements of the legislation and failed to act on a proposed rescission package. Based on conversations I had at the time with legal experts I believe that the language above gives the President implicit authority to defer spending until Congress acts on the rescission and that OMB would be allowed to utilize the practice it has followed under Title X of the Impoundment Control Act of withholding funds from apportionment until Congress acts on the rescission message. However, if the Committee decides to adopt the language mentioned above, you may want to clarify that point in the legislative language or committee report.

Limitations on when and how often the President may propose rescissions

Most of the previous expedited rescission proposals granted the President the authority to submit one rescission package per bill for expedited consideration within ten days after enactment. All of the proposed rescissions for each bill would be bundled into one package for Congressional consideration. This limitation was included to prevent the President from tying up the legislative schedule with dozens of rescission proposals that would receive priority consideration. The President would be free to submit additional rescissions throughout the year as under current law, but they would not be eligible for expedited consideration. By contrast, H.R. 4890 gives the President the ability to submit rescissions throughout the year with no limits on the number of rescission proposals he can submit. This gives the President greater flexibility to rescind items that are discovered or found to be of low priority well after a bill has been signed into law, but also presents opportunity for abuse.

Separate votes on individual rescission items

The requirement that all rescissions in each bill be bundled together led to concerns that individual items would not get an up or down vote on its merits but could be eliminated because it was packaged with other less meritorious items. This led to the inclusion of a process to divide up a package of rescissions. The Stenholm-Spratt legislation passed by the House in 1993 allowed 10 Senators or 45 Members of the House of Representatives to demand a separate vote to strike an item from the package. That way if the President proposed to rescind an item with strong Congressional support in a package with a dozen other lower priority items, Congress would have the option of striking the popular provision from the package and approving the rest of the package instead of being forced to choose between rejecting the entire package or approving the rescission of an item with strong support.

H.R. 4890 does not include language providing the ability to get a separate vote on individual items in the package. This is obviously much less of an issue without the requirement that all rescissions for each bill be bundled together. However, even under H.R. 4890 the President potentially could try to thwart the will of Congress by packaging a rescission that does not have Congressional support with other rescissions that are difficult to reject.

Sunset

Concerns have been raised that the President could abuse the authority granted under this legislation. Specifically, it has been suggested that a President could use this authority not to reduce the deficit but to punish his opponents and increase his leverage with Members of Congress. In fact, some have argued that granting the President this authority could just as easily increase spending if the President threatens to veto items unless programs he favors are increased. I believe that these dangers are mitigated by the fact that the President must get a majority of the House and Senate to support his rescissions for them to take effect. Moreover, a President who blatantly abused the authority for political purposes would risk political repercussions with the public as well as Congress.

Nonetheless, these are very serious and legitimate concerns and it is impossible to determine whether or not these fears are founded until the President has the authority. Some previous expedited rescission proposals have addressed the concern by including a provision sunseting the authority after two years. Advocates of this approach referred to it as a “two year test drive” to see how it operates. If a President abused the authority, Congress almost certainly would not approve an extension. This is similar to the approach that Congress took when it granted the executive branch additional authority in the Patriot Act.

Applying Rescission Authority To Targeted Tax Provisions

H.R. 4890 would allow the President to propose rescission of targeted tax benefits for expedited consideration in Congress. As a general principle, The Concord Coalition believes that budget enforcement rules should apply equally to taxes and spending. Since spending and tax decisions both have consequences for the budget, there is no good reason to exempt either from budget discipline. It is therefore very appropriate to extend expedited rescission authority to special interest tax breaks. Special interest provisions in tax bills have as much if not more of an impact on the federal budget than earmarks in appropriations bills. The vast number of special interest fiscal giveaways in the corporate tax bill passed in 2004 and the tax incentives in the energy bill approved last year are just the latest examples of tax bills becoming the vehicle for Congressional pork-barreling at its worst.

Applying this authority to tax legislation has encountered resistance among some Republicans in the past. However, it is worth noting that the concept of allowing the President to single out targeted tax breaks in the same way as spending earmarks was originally introduced into the debate by then House Republican leader Bob Michel. Exempting tax cuts from modified line item veto authority would also encourage an expansion of so-called ‘tax entitlements’ where benefits are funneled through the tax code rather than by direct spending, a far less efficient approach.

Ensuring the savings go to deficit reduction

The President proposed that the modified line item veto be linked to deficit reduction and that any savings achieved would not be available to offset increases in other programs. The Concord Coalition strongly supports the requirement that all savings from modified line item would go to deficit reduction. This requirement ensures that the authority will be used to improve the overall fiscal condition instead of simply reducing the priorities of Congress in order to fund the President’s priorities.

H.R. 4890 seeks to impliment this mandate by providing for an adjustment of spending allocations to reflect enacted rescissions and requiring the Director of the Office of Management and Budget Committees to adjust any statutory spending limits. Without these provisions the enactment of a rescission package would simply free up additional room within budget allocations and spending limits for other spending.

This language is very useful as far as it goes. However, I would encourage the Committee to take it a step further and clarify that any savings from rescinding a tax or entitlement provision

would not be credited to the paygo scorecard for purposes of Congressional rules or statutory budget enforcement rules. The principal that the purpose of the modified line item veto should be to improve the budget's bottom line and not rearrange budgetary priorities should apply to tax and entitlement legislation as well.

Although statutory pay-as-you-go rules expired in 2002, the Senate still has a "post-policy" paygo rule for tax and entitlement legislation which increases the deficit beyond the amount provided in the budget resolution. Approval of a Presidential proposal to rescind a tax benefit should result in a corresponding reduction in the amount available on the Senate paygo scorecard for tax cuts. More importantly, as I stated earlier The Concord Coalition continues to urge Congress to reinstate paygo rules for all tax and entitlement legislation which would reduce the deficit. We would therefore encourage the Committee to adopt language ensuring that any savings from rescinding a tax or entitlement spending provision would truly go to deficit reduction and could not be used to offset other tax cuts or entitlement spending increases.

Conclusion

The proposed modified line item veto and similar proposals would not remotely begin to address the magnitude of our fiscal challenges. Budget enforcement tools such as pay-as-you-go rules for all tax and spending legislation which would increase the deficit would have a much greater impact on fiscal policy. Balancing the budget and establishing a fiscally sustainable course for the future will require Congress and the President to confront tough choices regarding tax and entitlement policy. However, granting the President modified line item veto authority could be a useful tool in improving the accountability of the budget process and achieving greater public confidence in the budget process that will be necessary to make the tough choices on much larger fiscal issues.