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*Last Updated: 02/28/2025*

# WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING☐ H - INTERNAL☐ I - INCOMINGDate Correspondence  
Received (YY/MM/DD) 1 / 1 / 1Name of Correspondent: James Hamilton☐ MI Mail Report

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

Subject: A Legislative Proposal for Resolving  
Executive Privilege Disputes Precipitated  
by Congressional Subpoenas

## ROUTE TO:

## ACTION

## DISPOSITION

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Completion Date YY/MM/DD
<u>W Holland</u>	<u>DDI</u> ORIGINATOR	<u>8410228</u>		<u>8410319</u> PY
<u>WAT 09</u>	Referral Note: <u>see FFF note</u> <u>A</u>	<u>8410229</u>		<u>8410319</u> PY
<u>Cufiel</u>	Referral Note: <u>S</u>	<u>8410319</u>	<u>FF</u>	<u>8410319</u> PY
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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:

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C - Completed  
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C _ _		Time: _____	P- _____
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#### SIGNATURE CODES:

CPn - Presidential Correspondence  
 n - 0 - Unknown  
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 n - 2 - Ronald Reagan  
 n - 3 - Ron  
 n - 4 - Dutch  
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CLn - First Lady's Correspondence  
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 n - 2 - Nancy  
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CBn - Presidential & First Lady's Correspondence  
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 R - Report  
 S - Sealed  
 T - Telegram  
 V - Telephone  
 X - Miscellaneous  
 Y - Study

THE WHITE HOUSE

WASHINGTON

March 19, 1984

Dear Jim:

Thank you for your courtesy in forwarding me a copy of the article you co-authored with John Grabow for the Winter 1984 issue of the Harvard Journal on Legislation on "A Legislative Proposal for Resolving Executive Privilege Disputes Precipitated by Congressional Subpoenas."

As you know, I very much share your interest in the issues addressed by your article and the proposed legislation it recommends. I'm afraid the last few weeks, however, have afforded little opportunity to think about these matters in the abstract, and in consequence I have to date been unable to give the article the careful study it deserves. I am looking forward, though, to reviewing the article and the proposed statute in some detail, and hope we will have an opportunity to discuss your ideas in the not too distant future.

Thanks again for sharing the article with me. With best regards,

Sincerely,

Orig. signed by FFF

Fred F. Fielding  
Counsel to the President

James Hamilton, Esquire  
Ginsburg, Feldman and Bress  
1700 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006

FFF:PJR:pr 3/18/84  
cc: FFFfielding✓  
PJRusthoven  
Subject  
Chron.




MEMORANDUM

THE WHITE HOUSE

WASHINGTON

March 18, 1984

FOR: FRED F. FIELDING

FROM: PETER J. RUSTHOVEN 

SUBJECT: Letter from James Hamilton on Legislative Proposal for Resolving Executive Privilege Disputes Caused by Congressional Subpoenas

James Hamilton of Ginsburg, Feldman and Bress wrote you at the end of last month enclosing for your review an article he co-authored for the Winter 1984 issue Harvard Journal on Legislation entitled "A Legislative Proposal for Resolving Executive Privilege Disputes Precipitated by Congressional Subpoenas."

The article reviews executive privilege disputes between the Legislative and Executive Branches, including the controversies during this Administration involving former Interior Secretary James Watt and former EPA Administrator Anne Gorsuch Burford, and proposes enactment of a new section of Title 28 of the United States Code that would give "the United States District Court for the District of Columbia original jurisdiction to hear, on an expedited basis, a suit brought by either house of Congress, or by an authorized committee or subcommittee, to enforce subpoenas issued to executive branch officials." The President and the Vice President would expressly be included in the definition of such officials.

As you suggested, attached for your review and signature is an interim response to Hamilton acknowledging receipt of the article, and advising that you hope to have the chance to study it more closely and discuss the proposal with him.

In addition to sending this letter, you may wish to consider forwarding copies of the article to Ted Olson at OLC and Roger Clegg at OLP for their review and comment, perhaps after the new Attorney General is in place. Let me know; thanks.

Attachment

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209196 cu

February 27, 1984

The Honorable Fred F. Fielding  
Counsel to the President  
The White House  
Washington, D.C. 20500

Dear Fred:

I thought you might be interested in the enclosed article.

I hope the Administration will support the proposed bill, which I'm told will be introduced in the near future.

I'll be happy to talk with you about this if you wish.

Best regards,



James Hamilton

Enclosure



1984 FEB 28 PM 2: 38

THE WHITE HOUSE  
WASHINGTON

January 23, 1984

file  
Received SS

1984 JAN 25 PM 5:48

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MEMORANDUM TO EDWIN MEESE, III  
JAMES A. BAKER, III  
RICHARD G. DARMAN  
LARRY SPEAKES  
JOHN A. SVAHN

THRU: M. B. OGLESBY *ho*

FROM: W. DENNIS THOMAS *ho*

SUBJECT: House Budget Committee Report on  
Line-Item Veto

Attached is a report from the House Committee on the Budget regarding Line-Item Veto. I am sure we can anticipate calls for the Administration's comments regarding the Committee's conclusions.



## Analysis

### Line-Item Veto: An Appraisal House Committee on the Budget

The Budget Committee staff "appraisal" principally attempts to discredit the line-item veto (LIV) concept as unnecessary (there are already extensive mechanisms and authority the President can exercise) and inconsequential (too much of the budget is shielded).

Although the historical descriptions of previous federal and state activity are by and large accurate, the analysis of arguments "pro and con" are clearly slanted to minimize consideration of LIV as a viable option for actual deficit reduction.

[COMMITTEE PRINT]

# THE LINE-ITEM VETO: AN APPRAISAL

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COMMITTEE ON THE BUDGET  
U.S. HOUSE OF REPRESENTATIVES

[Prepared by the Staff of the House Committee on the  
Budget]



JANUARY 1984

CP-4

Printed for the use of the Committee on the Budget

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U.S. GOVERNMENT PRINTING OFFICE

29-437 O

WASHINGTON : 1984



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(iii)

## INTRODUCTION

An issue of emerging importance is whether the President's power should be expanded to include a line-item veto of measures passed by the Congress. Throughout our constitutional experience no President has ever had this power.

At various times throughout our history, Presidents have requested delegations of authority to deal with line items more effectively. Today's debate, however, centers on whether we should have a constitutional amendment to provide this authority.

The question of a line-item veto has been raised at this point, largely, though not entirely, because of growing Federal deficits. A spate of articles have appeared in national publications such as the Wall Street Journal, the New York Times, and the Washington Post, arguing the pros and cons of this proposal.

The purpose of this report is to review the question of the line-item veto starting with the limits of the line-item veto as a deficit reduction instrument, a review of the current legislative authority of the President, a brief history of its use, both at the Federal and State level, and a summary of major arguments made for and against the proposal.

This report has been prepared by the staff of the House Committee on the Budget and does not necessarily reflect the views of any of its Members.

(1)

## I. DEFICIT REDUCTION AND THE LINE-ITEM VETO

A great deal of confusion has emerged about the line-item veto as a deficit reduction instrument. While a line-item veto could allow reductions in expenditures, its usefulness would be extremely limited given the amounts that could be reduced in comparison to the size of the projected deficits.

The key reason for this is that budget expenditures would not be uniformly subject to a line-item veto. Current proposals for a line-item veto would limit its use to only those matters subject to discretionary annual appropriations. Interest on the national debt is a mandatory appropriation and must be paid in its entirety and therefore not subject to a line-item veto. Current law mandates that social security and other entitlements must be paid in their entirety or the Federal Government will be subject to suit from those meeting eligibility criteria. For example, using the preliminary 1985 CBO projection on expenditures which total \$925 billion, the following categories and amounts would be exempt from a line-item veto:

	Billions
● Net interest payments.....	\$116
● Social Security .....	189
● Medicare and Medicaid .....	98
● Other mandatory programs.....	92
Total amount exempt from line-item veto.....	495

The areas where a line-item veto could reduce the deficit are national defense (\$265 billion) and nondefense discretionary (\$164 billion). Even in these areas, the line-item veto would have limited usefulness in achieving spending cuts. In defense, about \$110 billion in outlays is based on prior year budget authority or is otherwise committed, and therefore ineligible for a line-item veto. In nondefense discretionary programs, about \$78 billion in outlays is based upon prior year budget authority and likewise exempt from the reach of a line-item veto.

This means that of the total \$925 billion estimated for Federal expenditures in fiscal year 1985, only \$242 billion would be subject to a line-item veto.

Given the President's policies, however, this figure shrinks further. The President has requested *more* money for defense in the past than the Congress has enacted, not less. It is reasonable to assume that the President would not use the line-item veto power on the \$155 billion in defense spending that would be subject to such action. This leaves only nondefense discretionary spending, about \$86 billion, where the President could use a line-item veto. Included in this figure are appropriations for such programs as the FBI, Coast Guard, Drug Enforcement, Education and Training, Na-



which have been supported by this administration in all of its budget plans.

Finally, of the \$86 billion mentioned above, preliminary administration reports reveal that the intention of the administration is to reduce spending in this area by no more than \$2.9 billion, which would be approximately 1½ percent of the projected deficit.

The items currently scheduled for major reductions include programs such as Headstart, Older Americans, Handicapped Rehabilitation, Social Services Block Grants and Child Welfare.

Finally, if one examines the fiscal year 1984 experience, the President's request differed in spending from what was actually appropriated in nondefense discretionary spending by about \$9 billion.

This difference was largely due to programs such as:

1. Postal subsidies—for the blind churches, veterans and other nonprofit organizations (\$0.5 billion above the President's request).
2. Natural resources—including environmental protection (\$1.3 billion above the President's request).
3. Education and training (\$1.3 billion above the President's request).
4. Low income energy assistance (\$0.5 billion above the President's request).
5. Discretionary health (\$0.5 billion above the President's request).
6. Mass transit (\$0.4 billion above the President's request).
7. Older Americans, Headstart, Child Welfare (\$0.3 billion above the President's request).

This, of course, is not an all-inclusive list but these are the major differences, and thus would be the most likely targets for an item veto.

Beyond this, whatever the long-term merits of a line-item veto, in the short run it could not solve our immediate problem of projected deficits for the 1980's in the \$200 billion range. This is true for two basic reasons: a) a constitutional amendment granting this power could not be proposed and adopted in a time period necessary to address the deficit problem, and b) as stated above, its applicability is limited in terms of the amounts that could be reduced in any given year.

The long-range concern about the item veto is basically a constitutional and political one. The issue is whether, under our separation of powers system, the President should have this increase in legislative power. The Constitution, itself, states very succinctly that "all legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives" (Article I, Section 1). Extending the President's veto power beyond what the Constitution now provides would allow the President largely to substitute his judgment for that of a majority of the Congress on specific policy items.

## II. EXISTING MECHANISMS

The President of the United States has rather extensive legislative powers under our present constitutional system, which has been operative since 1789. Although the argument has been made that a simple statutory change redefining the word "bill" could give the President the power of a line-item veto, the general consensus is that a constitutional amendment would be required to effectuate the new power. This, in itself, would be a complicated and lengthy process. Surely, before one would want to embark on such a course, one should carefully review the current legislative powers encompassed in the Office of the President. The following is a review of the existing mechanisms of legislative authority the President currently has to address specific line items.

Under the Congressional Budget and Impoundment Control Act of 1974, Congress has delegated power to the President to control line item expenditures. This authority, of course, is subject to Congressional review, but nevertheless, is extensive. Under the act, the President can defer expenditures for any line item he prefers for any time not extending beyond the end of the fiscal year.<sup>1</sup> This, of course, does not produce any long term savings but it enhances the President's line-item control of the budget.

The act also confers upon the President the power to rescind specific line items of his choosing and the rescission will become permanent upon the approval of Congress within 45 days. This, in effect, means the President has vetoed the line item and has requested a simple majority vote to support his decision. The authorities under the act have been used extensively. In President Reagan's first 2 years in office, the Congress allowed more than three-quarters of his rescission requests, resulting in more than \$20 billion in lower spending.

We operate under a system of an "executive budget" within our constitutional system and the powers delegated to the President by the Congress in the Budget and Accounting Act of 1921, the Budget and Accounting Procedures Act of 1950, as amended, and the Congressional Budget Act of 1974.

The initial submission of a comprehensive plan lies in the hands of the President alone. A budget submitted by the President is a detailed document reaching to the account and subaccount levels. Following the budget submission the President submits specific legislative proposals in draft form to the various committees having jurisdiction over specific subject matter. These submissions are line items and the inclusion or exclusion of specific line items vests considerable power in the hands of the President. Given our present

<sup>1</sup> The power of Congress to disapprove Presidential deferrals remains in doubt following the Supreme Court's recent decision in *INS v. Chadha*, wherein legislative vetoes were ruled unconstitutional.

political system the President has at his disposal the use of the media on an ongoing basis to promote or oppose specific line items as they arise.

Of further importance is the President's state of the Union address. Every President since George Washington has included in his state of the Union address to Congress a legislative program, or at least the general outline of one, for Congress to consider. At the beginning of the second term of Thomas Jefferson's Presidency, for example, he included in his state of the Union address, proposals for inland waterways and public works programs.

Today, given the wide media coverage that this address receives, the event becomes a considerable legislative instrument for the President to garner widespread public support for his legislative program.

There are numerous examples where the President has used the powers outlined above to either insure the passage or defeat of specific line items before there was even any threat of the use of the ultimate veto power. President Reagan himself, in his first year of office, was able to pass over 90 percent of the programs and proposals he submitted to Congress, including measures that were highly controversial. The President was able to initiate specific changes in food stamps, medicare, weapons systems, defense, and other line-item areas.

A power available to but seldom used by the President is one to call special sessions of Congress. If a President is dissatisfied, as Harry Truman was in 1946, with the performance of Congress, he can call Members back into session. A President's call for a special session will invariably include a request for specific line items that he thinks are essential.

Of course, the President's constitutional power to veto entire bills has also found extensive use. Over the years, Presidents have exercised their veto power 2,413<sup>2</sup> times and those vetoes were overridden only 97 times. During his term, President Reagan vetoed 22 bills, 3 of which were overridden by Congress.

Initially, the general veto was used by Presidents to address congressional action which they considered unconstitutional. More recently, the general veto has been used as more of a negotiating tool, with vetoed legislation being sent back to Congress only to resurface in a form acceptable to both the Executive and the legislative branch. The current use of the veto is clearly based on line item considerations, since rarely does a President, including President Reagan, object to an entire measure. The most specific example of the use of the general veto to affect line items occurred in 1981, when President Reagan vetoed the continuing resolution providing authority for expenditures for the remainder of fiscal year 1982 because of his objections to specific line items. The bill was redrafted to meet those objections and later approved.

In conclusion, under current practice, the President has comprehensive legislative powers that reach to every line item that Congress considers.

<sup>2</sup> Includes 1,017 pocket vetoes (instances where the President fails to approve a bill after Congress has adjourned).

### III. BRIEF HISTORY OF THE LINE-ITEM VETO

Article I, Section 7 of the Constitution of the United States provides:

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. If after such reconsideration two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a law.

While the President may either approve or disapprove a bill in its entirety, under the prevailing construction of Article I, Section 7, he lacks the power of an item veto with respect to measures passed by Congress.

The term "item veto" is used to describe the power of the executive to reduce or eliminate individual items in appropriation bills. Generally, an item-veto mechanism provides that, in signing a bill, the Chief Executive shall designate the appropriations and provisions to which he objects; and return a copy of such appropriations and provisions, with his objections, to the House in which the bill shall have originated. Most proposals provide that the same procedures would then be followed as with an ordinary veto, including reconsideration by the legislature with the requirement of a two-thirds vote for overriding the Chief Executive's veto. Other proposals call for the vote of a constitutional majority of both Houses to achieve the override.

#### *History*

While the framers of the U.S. Constitution did determine that the President had to be given the power to veto legislation if he was to remain independent of the Congress, the question of conferring on the President the power to veto individual items in appropriation bills was not even discussed in the Constitutional Convention of 1787.

The Chief Executive has attempted to exercise a line-item veto power in a number of ways. In 1830, President Andrew Jackson signed a bill and simultaneously sent to Congress a message that restricted the reach of the statute. The House, which had recessed, was powerless to act but subsequently issued a report interpreting President Jackson's actions as constituting a line-item veto of one of the bill's provisions. In 1842, President John Tyler signed a bill and advised the House that he had deposited with the Secretary of State "an exposition of my reasons for giving to it my sanction." In response, a House select committee issued a report protesting the action, saying that such extra-constitutional activity by the Presi-

public records and archives.

The first instance of an item veto being written into an American Constitution occurred in the Provisional Constitution of the Confederate States adopted February 8, 1861. At about the same time, the national Congress began the practice of attaching legislative "riders" to appropriation bills. The practice arguably had the effect of diminishing the veto power of the President by forcing him to veto necessary appropriations if he wanted to disapprove the rider. Following the Civil War, the several States began to revise their constitutions to include such an item veto provision.

The practice of attaching nongermane riders to bills became so commonplace that, in 1873, President Ulysses Grant recommended, in a message to Congress, an amendment to the Constitution "to authorize the Executive to approve of so much of any measure passing the two Houses of Congress as his judgment may dictate, without approving the whole, the disapproved portions or portion to be subject to the same rules as now." In response to building sentiment, on January 18, 1876, Representative Faulkner, of West Virginia, introduced H. Res. 46, the first constitutional amendment proposing to confer upon the President the power to veto items in appropriation bills.

President Grant's recommendation was renewed in 1879 by President Hayes and in 1882 by President Arthur. It was not until 1883, however, that the item-veto proposal was put to a vote. In that instance, a motion to suspend the rules so that the House Judiciary Committee might be discharged and H. Res. 267 passed, failed to achieve the required two-thirds majority for passage.

April 21, 1884, marked the only time the Senate Judiciary Committee favorably reported a resolution (S. Res. 18) proposing to amend the Constitution so as to confer on the President the power to veto items in appropriation bills. That bill was passed over for consideration in the 48th Congress. In 1913, hearings were held on a similar amendment (H.J. Res. 15), but that bill was not reported.

While Congress has not acted affirmatively on incorporating a line-item veto provision in the Constitution, it has, from time to time, granted item veto authority in organic laws to the Governor of the Territory of Hawaii (1902), the Governor of the Territory of Alaska (1912), the Governor-General of the Philippines (1916), the Governor of Puerto Rico (1917), and the Governor of the Virgin Islands (1954).

In 1938, in addressing the prospects of a constitutional amendment providing presidential line-item veto power, President Franklin D. Roosevelt proposed that the same result (as a constitutional amendment) could be achieved by incorporating in appropriations bills a provision allowing for a "legislative veto" of Executive actions within a given number of days. The House adopted the Roosevelt language as an amendment to the Independent Offices Appropriations Act; 1939, thereby authorizing the President "to eliminate or reduce by Executive order, in whole or in part, any appropriation or appropriations made by [that] act, . . . whenever . . . he shall find and declare that such action will aid in balancing the budget or in reducing the public debt, and that the public interest will be served thereby . . ." The language also provided that such

of 60 calendar days during which, presumably, Congress could act either to provide an earlier effective date or disapprove the President's action. The proposal failed in the Senate.

In 1949, the Hoover Commission implicitly called for item veto authority in its Recommendation No. 4, "Reduction of Appropriations", where it advocated the "right of Bureau of the Budget and President to reduce appropriated amounts during the year for which they were provided . . ."

More recently, the spate of impoundments exercised by President Nixon gave rise to enactment of the Impoundment Control Act of 1974, a measure affording the President the power of rescission and deferral. That legislation contains a modified form of line-item veto insofar as it permits the President to sign an entire appropriation bill and later express disagreement with some portion of it by temporarily or permanently withholding designated funds from availability for obligation and expenditure.



#### IV. EXPERIENCE IN THE STATES

At present 43 States permit item vetoes in appropriation bills. Six States authorize general vetoes of bills but do not authorize item vetoes (Indiana, Maine, Nevada, New Hampshire, Rhode Island, and Vermont). One State, North Carolina, does not allow its Governor to veto any legislative bills.

Following the Civil War, many States revised their constitutions to respond to the practice of adding legislative riders to appropriation measures and to give their Governors more power to fulfill State constitutional mandates that the State's budget be in balance. While most States amended their constitutions to include line-item veto power for the chief executive, the schemes adopted in the several States vary widely.

In Illinois, the Governor has reduction veto power on a particular line item. The amount he approves becomes law unless his veto is overridden by the legislature. In Alabama, the Governor may veto a major budget bill entirely or offer executive amendments, which may delete or add figures and language. In Indiana, a court suit has held that the Governor, in vetoing items, must veto a complete section and only in an appropriation bill.

The State mechanisms also differ with respect to legislative language accompanying appropriations. Among the most permissive is that of Wisconsin, where substantive program language contained in the budget bill can be item vetoed apart from appropriation figures. In Michigan, where the Governor may veto distinct items of appropriations, the rule has been that when a line item is vetoed, the language accompanying that line item is also vetoed. In Colorado, under a more restrictive approach, the Governor can veto accompanying language only if it is unconstitutional. Illinois avoids the issue insofar as its State constitution prohibits substantive language in an appropriations bill.

State constitutional provisions also differ widely with regard to the manner in which executive vetoes may be overridden by the legislature. The votes required in each House to pass appropriations and revenue bills or items over the Governor's veto include: Majority elected (Arkansas), three-fifths elected (Maryland), two-thirds present (Texas), two-thirds elected (Mississippi), three-quarters elected (Alaska).

The power of line-item veto in the States has given rise to significant political strife which has, at times, threatened the shutdown of Government services and withholding of payments. In California, the line-item veto presents a perennial problem with the legislature holding back appropriations bills until a deal is struck with the Governor on use of his line-item veto power. California law provides that the State budget is to be signed into law by July 1 of each year. In 1983, the legislature refused to send the Governor the budget along with a trailer bill, upon which the budget was contin-



gent, until the Governor agreed to sign both measures. The Governor had proposed a budget of \$22 billion while the legislature passed a budget of closer to \$23 billion. The result of the political logjam was that the State budget was not signed into law until July 19, 1983. A Federal court compelled California to mail 346,615 State welfare and salary checks during the hiatus even though the State was without a budget and the Governor without the authority to spend after June 30, 1983.

Similarly, in Pennsylvania the Governor faced the choice of using his line-item veto to balance the budget sent to him, cutting out \$1 for every \$8 in the budget, or vetoing the entire measure and continuing the stalemate with the legislature while State welfare and paychecks went unmailed. In exercising his line-item veto, Governor Thornburgh responded to the house, which had added spending without new revenues, by vetoing the house's appropriation for itself.

## V. ARGUMENTS FOR AND AGAINST

Debate over the institution of a Presidential line-item veto has given rise to a number of arguments both favoring and opposing the concept. Those arguments are summarized below. The arguments presented in this section are not those of the House Budget Committee nor do they represent a Budget Committee evaluation of the proposal. As indicated, they are the arguments which supporters are making on behalf of the bill and which opponents are making against it. The Budget Committee staff attempts to summarize the arguments on both sides as cogently as possible.

### *Balance of powers: For*

It would restore the veto power to the President. The line-item veto would reestablish the constitutionally provided system of checks and balances. Appropriation bills almost invariably are composed of items necessary for the public welfare as well as items not necessarily in the public interest. At present, the President has no choice but to approve all or disapprove all, thus risking delay or discontinuance of necessary functions and work on needed projects. The existing veto power has been eroded by omnibus appropriations and late passage of bills. (See remarks of Senator Alan J. Dixon, *Washington Post*, October 19, 1983.)

### *Against*

It would give the President legislative authority not envisioned by the Constitution. The veto power is legislative in nature. It is inappropriate for the President to substitute his judgment for that of the legislature. Such a move would mix the powers of executive and legislative departments in a way that was never intended by the framers of the Constitution. (See remarks of Representative Barber Conable, *Wall Street Journal*, January 5, 1984.)

The device would violate the principle of separation of powers embodied in the Constitution. The item veto would practically destroy the only power Congress now has over the President other than impeachment. The power of coercion would be removed by this device thus making the legislature subservient to the will of the Executive. (See remarks of Representative Silvio Conte, *New York Times*, January 4, 1984.)

It would defeat the legislative intent of Congress. In exercising his line-item veto, the President would be proposing to give an independent appropriation to individual objects, a proposal upon which the will of Congress has never been expressed. The President would thereby originate an appropriation, not suggested by Congress, and make it law, if more than one-third of either House agrees with him, thus eroding the principle of majority rule. Congress would be forbidden to make dependent appropriations.

appropriations bills. Each of these measures represents a statement of policy—the provisions taken as a whole representing the congressional will for the coordinated operation and management of a program based on a broad theme. To afford the President power of a line-item veto would be to allow the Executive to thwart the congressional will in legislating public policy.

#### *Reducing deficits: For*

It would help to reduce deficits. The item veto power would bring the President into the budget process to a greater degree to help reduce deficits without undermining the congressional power of the purse. (See remarks of Representative Jack Kemp, Dear Colleague of September 19, 1983.)

#### *Against*

Item veto power would not lead to a major and timely reduction in the deficit. Two major causes of high deficits, defense spending growth and certain taxes, are often supported by the Executive and would not be addressed under the power. The vehicle could only be used to control discretionary spending—a relatively small portion of the Federal budget.

The proposal is a political move rather than a substantive approach to deal with Federal deficits. The item veto cannot reach the enormous sums provided for entitlement programs and most proposals are silent on the subject of addressing tax expenditures. (See remarks of Senator Mark Hatfield, *Congressional Record*, October 7, 1983. Also see I.)

Even if the item veto power were used to address the Federal deficit, adoption of a constitutional amendment would take several years. Record deficits choking off this Nation's economy are today's problem.

The President already has the tools to cut spending in individual line items. The Congressional Budget and Impoundment Control Act of 1974 granted power to the President to propose rescissions and deferrals of budget authority. In his first 2 years in office, Congress allowed more than 75 percent of President Reagan's rescission requests under that authority, resulting in more than \$20 billion in lower appropriated spending in fiscal years 1981 and 1982.

#### *Congressional timetable: For*

It would force early congressional consideration of appropriations. Veto of an entire bill near the end of a session necessitates prolongation of the session as, in the absence of a veto override, a new bill must pass the House and the Senate and go to conference prior to final enactment. The item veto power would expedite completion of the legislative program so that specific vetoed items could be reconsidered prior to the beginning of the fiscal year.

#### *Against*

It would delay the timely consideration of appropriations. As has been the case in a number of States, the legislature would be reluc-

prior to extensive negotiation on his use of the line-item veto. The Appropriations Committees would hold back all of their bills until agreement could be reached on a myriad of details. If compromise is not arrived at, the real threat would be a shutdown of Government services on a broad scale.

#### *Addressing omnibus appropriations: For*

It would work to curb the effectiveness of logrolling and discourage pork-barrel appropriations and would reduce extravagance in public expenditures. The item veto would allow the President to focus attention on items he believes to be wasteful, inappropriate, or unwise without holding hostage portions of appropriations to which he does not object. (See remarks of Senator Alan J. Dixon, *New York Times*, January 4, 1984.)

#### *Against*

It would lessen the responsibility of Congress. The item veto would allow one branch of Government to pass the buck to the other. Members of Congress could put all of their pet projects in a bill, letting the President take the heat for vetoing fiscally irresponsible yet district-pleasing projects. As President Taft said, in 1916, "It is wiser to leave the remedy . . . to the action of the people in condemning at the polls the party which becomes responsible for such riders than to give, in such a powerful instrument, a temptation to its sinister use by a President eager for continued political success."

#### *Power of persuasion: For*

It would provide a useful tool of persuasion to the President. The item veto threat would be effective in persuading Congress to modify legislation before presenting it to the President for signature.

#### *Against*

In recent years the President has become so closely in touch with legislation as it progresses through each House that he can make his opposition to particular items or provisions known before the bill is presented to him for signature. By personal consultation with party leaders, by his use of liaison officers, by his supervision over the budget, by special messages to Congress, or even by radio and television appeals to the people, the President can exercise influence over details in appropriations. (See II.)

#### *The experience of the States in use of the line-item veto: For*

Governors and State legislators alike have called exercise of the item veto favorable in completing budgetary policy in their States. They claim the device has been used with wise judgment and discretion to check unnecessary or unsound expenditures, to delete legislative riders, and to prevent pork-barrel appropriations.

While the item veto was adopted by many States as a corrective measure for the mistakes of legislatures which met irregularly and had little knowledge about programs, Congress meets constantly and, based on the responsibility given it in Article I of the Constitution, makes the major decisions about the expenditures of public funds.

Furthermore, some Governors have privately questioned the effectiveness of their own line-item veto power. (See IV.)

*Other arguments: For*

Unwise action by the President would be combatted. Congress would almost certainly override unwise action by the President vetoing a recognizedly vital project or function.

*Against*

It would be an uncertain grant of power. The language of the usual amendments designed to confer on the President the power to veto items or provisions in appropriation bills has been given varying interpretations in the several States. The Pennsylvania Supreme Court has construed the expression "to disapprove any item" to include the right "to reduce any item." Were the U.S. Supreme Court to interpret similar language the same way, the President could modify legislative appropriations almost at will; he could delete some items; he could reduce others; he could approve the remainder. This would, in effect, shift control of the purse strings of the Government from Congress to the Executive.

○



211658

ID # \_\_\_\_\_

**WHITE HOUSE  
COUNSELLOR'S OFFICE TRACKING WORKSHEET**

FE002-01

☐ O - OUTGOING☐ H - INTERNAL☐ I - INCOMINGDate Correspondence  
Received (YY/MM/DD)

83/03/12

Name of Correspondent: John Tower☒ CN Mail Report

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

Subject: Request for Mr. Meese's personal response as to his own opinion on the availability of a determination in the Federal courts of the constitutionality of the War Powers Resolution.

## ROUTE TO:

## ACTION

## DISPOSITION

Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
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	CNHAMM				C	1/1
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						1/1
						1/1
						1/1
						1/1

## 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"  
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Prime Subject Code: 16 002-01 Secondary Subject Codes: \_\_\_\_\_  
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### PRESIDENTIAL REPLY

Code	Date	Comment	Form
C	_____	Time: _____	P- _____
DSP	_____	Time: _____	Media: _____

#### SIGNATURE CODES:

**CPn - Presidential Correspondence**  
 n - 0 - Unknown  
 n - 1 - Ronald Wilson Reagan  
 n - 2 - Ronald Reagan  
 n - 3 - Ron  
 n - 4 - Dutch  
 n - 5 - Ron Reagan  
 n - 6 - Ronald  
 n - 7 - Ronnie

**CLn - First Lady's Correspondence**  
 n - 0 - Unknown  
 n - 1 - Nancy Reagan  
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 n - 3 - Mrs. Ronald Reagan

**CBn - Presidential & First Lady's Correspondence**  
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 n - 2 - Ron - Nancy

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 S - Sealed  
 T - Telegram  
 V - Telephone  
 X - Miscellaneous  
 Y - Study

ST1028



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# United States Senate

COMMITTEE ON ARMED SERVICES

WASHINGTON, D.C. 20510

12 MAR 1984

211658

JAMES F. MCGOVERN, STAFF DIRECTOR AND CHIEF COUNSEL  
ARNOLD L. PUNARO, STAFF DIRECTOR FOR THE MINORITY

March 8, 1984

Honorable Edwin Meese  
Attorney General - Designate  
The White House  
Washington, D. C. 20500

Ed:  
Dear ~~Mr. Meese~~:

Last year I wrote to the Attorney General inquiring about the possibility of the Executive Branch's seeking a determination in Federal court regarding the War Powers Resolution.

I received a response to my letter on January 12 signed by the Assistant Attorney General for Legislative Affairs at the Department of Justice, Mr. Robert A. McConnell. I believe that Mr. McConnell's answer to my letter to the Attorney General was not fully responsive to the issues raised. Moreover, I think that the question of the War Powers Resolution is a critically important one, and one which deserves your personal attention as you prepare to assume your new responsibilities as the head of the Department of Justice and our Nation's chief legal officer.

My letter of October 24, 1983, a copy of which is enclosed, solicited the legal opinion of the Department of Justice as to whether or not there is a vehicle available to the Federal Government to obtain a determination in our Federal courts on the constitutionality of the War Powers Resolution. The response which I received was not a legal opinion on the availability of such a judicial determination, but rather a statement of the government's policy with respect to its participation in certain cases recently adjudicated dealing generally with the War Powers Resolution.

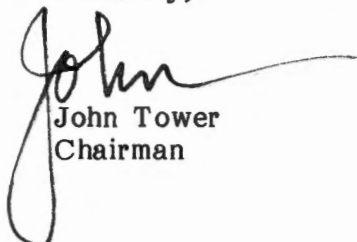
I have reviewed the cases cited in Mr. McConnell's response, a copy of which is also enclosed, and note that in neither case did either plaintiff request a declaratory judgment from the Federal court on the constitutionality of the War Powers Resolution. These cases dealt with the legality of certain actions in El Salvador and Nicaragua, and asked the courts to rule the Executive Branch actions illegal by applying the War Powers Resolution. Mr. McConnell correctly notes that the courts declined to do so for the reasons that he states, but this type of litigation does not result in a determination on the constitutionality of the War Powers Resolution, and that was the substance of my earlier request to the Attorney General.

Honorable Edwin Meese  
Page Two  
March 8, 1984

Since I never received a personal response from Attorney General William French Smith, and since the response which I received was essentially non-responsive, and since you represent new leadership in the Department, I now renew my request of October 24th to you. I would appreciate hearing from you personally, not from another official of the Justice Department or of the Executive Branch, as to your own opinion on the availability of a determination in the Federal courts on the constitutionality of the War Powers Resolution. If, in fact, you conclude that such a determination could be sought and obtained, then I would suggest that we further discuss the advisability of seeking such a determination.

As you know, I have had a long-standing interest in this legislation, and I have long believed that the statute is an unconstitutional infringement on the President's power as Commander-in-Chief. Ed, I know that you share my concern on this issue, particularly given its influence on recent events in Lebanon. I look forward to hearing from you soon.

Sincerely,

A handwritten signature in dark ink, appearing to read "John", with a long, sweeping horizontal line extending to the right. The signature is positioned above the printed name and title.

John Tower  
Chairman

Enclosures



U. S. Department of Justice

Office of Legislative Affairs

RECEIVED  
SENATE ARMED SERVICES  
COMMITTEE

1984 JAN 12 PM 4:01

Office of the Assistant Attorney General

Washington, D.C. 20530

January 12, 1984

Honorable John Tower  
Chairman  
Committee on Armed Services  
United States Senate  
Washington, D. C. 20510

Dear Mr. Chairman:

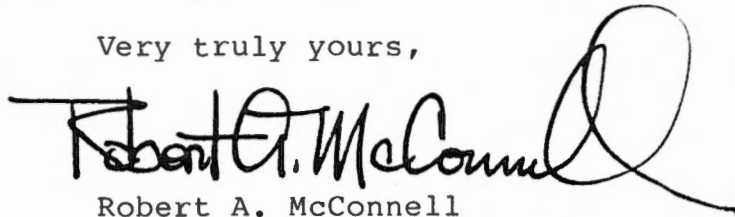
This responds to your letter of October 24, 1983 to the Attorney General regarding the advisability of the Executive and Legislative Branches' seeking a determination from the Federal Judiciary regarding the constitutionality of the War Powers Resolution. As you are probably aware, the concerns you express regarding the War Powers Resolution are similar to concerns expressed by every President since enactment of that Resolution in 1973, including President Reagan. We share your concerns.

Although we appreciate your interest in seeking such a determination, particularly in view of the recent events necessitating strong and decisive action by the President in carrying out his responsibilities under Article II, we have very serious reservations about the advisability and feasibility of such a course of action. The Department of Justice consistently has taken the position that such suits generally raise nonjusticiable political questions which are more appropriately resolved within the political branches. In this regard, the Department recently has argued that the resolution of such suits would require judicial inquiry into sensitive military and national security matters, that it would be impossible for the judiciary to undertake an independent resolution of the issues without expressing a lack of respect due coordinate Branches of the Government, and finally, that there is a lack of judicially discoverable and manageable standards for resolution. These arguments have prevailed in the United States District Court and Court of Appeals for the District of Columbia in the cases of Sanchez-Espinoza v. Reagan, 568 F. Supp. 596 (D.D.C. 1983), appeal docketed, No. 83-1997, (D.C. Cir. Oct. 17, 1983); and Crockett v. Reagan, 558 F. Supp. 893, (D.D.C. 1982), aff'd No. 82-2461 (D.C. Cir. Nov. 18, 1983).



Because we believe that our and the courts' analyses of the justiciability issues raised in these cases are grounded in sound constitutional and nonconstitutional legal principles, and are further supported by long-established jurisprudential considerations, we believe that it would be inappropriate for the Executive to join with the Congress in bringing these matters before the Federal Judiciary for resolution. Rather, we believe that a more prudent and fruitful approach to such issues in any particular context would involve their being addressed by our respective Branches with specific reference to the particular facts and circumstances giving rise to such issues. We believe this approach, although it may not produce a definitive resolution of these complex issues, is one that is more likely, over the long term, to produce that kind of accommodation between our two Branches that makes our Constitution the workable set of principles it has been for almost 200 years.

Very truly yours,

A handwritten signature in black ink, reading "Robert A. McConnell". The signature is written in a cursive style with a large, looping "Q" at the end.

Robert A. McConnell  
Assistant Attorney General  
Office of Legislative Affairs



U.S. Department of Justice

Office of Legal Counsel

RECEIVED  
SENATE ARMED SERVICES  
COMMITTEE

1984 JAN 12 PM 4:02

Office of the  
Assistant Attorney General

Washington, D.C. 20530

JAN 12 1984

Honorable Arlen Specter  
United States Senate  
Washington, D. C. 20510

Dear Senator Specter:

The purpose of this letter is to follow up on your letters of October 28, 1983 to Fred Fielding and November 17, 1983 to Majority Leader Baker, Mr. Fielding and myself regarding the desirability and feasibility of the filing of litigation by Members of Congress to test the constitutionality of several provisions of the War Powers Resolution, 50 U.S.C. §§ 1541 et seq. Fred has asked me to respond on behalf of the two of us.

As you will recall, during our meeting on November 7, 1983 on this subject, we expressed some institutional reservations regarding the feasibility of the approach outlined in your October 28 letter to Fred Fielding. Subsequent to that meeting, you forwarded to us a redrafted proposed complaint. Since receiving that revision on November 17, we have reviewed and discussed this matter in some detail. This review has led us to two conclusions. First, your redrafted proposed complaint probably represents as fine an effort to avoid the problems associated with such litigation as could be mustered. We agreed that there is a great deal to be said for resolving these open questions and that it is very unfortunate that these important foreign policy issues must constantly be encumbered by debates between the two Branches over the ambiguities and constitutionality of the War Powers Resolution. Second, however, notwithstanding the skillful efforts of you and your staff, we have come to the conclusion that we do not believe that such litigation is either advisable or feasible.

As we have also indicated in a letter that we have sent today to Senator Tower (attached), who also had expressed an interest in this subject, the Department of Justice consistently has taken the position that suits of this nature generally raise nonjusticiable political questions which are more appropriately resolved, under the Constitution, within the political Branches. In this regard, the Department recently has argued that the resolution of such suits would require judicial inquiry into sensitive military and national security matters, that it would be impossible for the judiciary to undertake an independent resolution of the issues without expressing a lack of respect due coordinate Branches of the Government, and finally, that there is a lack of judicially discoverable and manageable standards for resolution. These arguments have prevailed in the United States District Court and Court of Appeals for the District of Columbia in the cases of Sanchez-Espinoza v. Reagan, 568 F. Supp. 596 (D.D.C. 1983), appeal docketed, No. 83-1997, (D.C. Cir. Oct. 17, 1983); and Crockett v. Reagan, 558 F. Supp. 893 (D.D.C. 1982), aff'd No. 82-2461 (D.C. Cir. Nov. 18, 1983).

Because we believe that our and the courts' analyses of the justiciability issues raised in these cases are grounded in sound constitutional and nonconstitutional legal principles, and are further supported by long-established jurisprudential considerations, we believe that we would have to resist the bringing of these matters before the Federal Judiciary for resolution in the context which exists today (particularly with respect to the absence of a ripe, justiciable controversy which could not be resolved without reference to the courts).

We sincerely appreciate the time and effort you and your staff have expended on this issue. We regard our mutual efforts as very valuable notwithstanding our conclusion. In retrospect, although the lack of judicial resolution of these weighty constitutional issues may be nettlesome, the tensions these issues have produced from time to time between the two Branches may be unavoidable given the gravity of the situations in which they inevitably arise. While we have grave reservations regarding the wisdom of the War Powers Resolution and believe that it may be very counterproductive with respect to the ability of the President to conduct foreign policy, we may have no choice for the present, unless Congress is willing to rethink the issue, but to keep attempting to reach creative compromises on each occasion that these issues arise.

We sincerely appreciate your interest in this matter and your sensitivity to the concerns which have led us to our conclusion.

Sincerely,

A handwritten signature in black ink, appearing to read 'Theodore B. Olson', with a stylized, cursive script.

Theodore B. Olson  
Assistant Attorney General  
Office of Legal Counsel

Enclosure



JOHN TOWER, TEX., CHAIRMAN

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JAMES G. ROCHE, STAFF DIRECTOR FOR THE MINORITY

# United States Senate

COMMITTEE ON ARMED SERVICES

WASHINGTON, D.C. 20510

October 24, 1983

Honorable William French Smith  
The Attorney General  
Washington, D. C. 20530

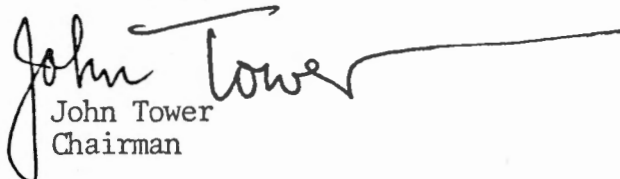
Dear Mr. Attorney General:

As you are aware, there has been significant controversy since the War Powers Resolution was enacted about the constitutionality of the law. It has been my personal view that the statute's infringement on the President's power as Commander-in-Chief is unconstitutional.

Given the recent controversy in the Congress about the War Powers Resolution and the stationing of United States Marines in Lebanon, I think it would be particularly useful if there were a mechanism by which our Federal Courts could resolve the constitutional question. Of course, I understand that it is a fundamental principle of our legal system that there must be a case or controversy before the courts will rule on a matter. However, I am also aware that there are certain circumstances where declaratory judgments can be obtained.

I would appreciate your opinion as to whether or not there is a vehicle available to the United States to obtain a determination from our Federal Courts on the constitutionality of the War Powers Resolution. If such a vehicle is available, I would urge that the Federal government take whatever steps might be necessary to have this matter brought into the courts so that they may resolve once and for all whether the fundamental provisions of the War Powers Act are consistent with the provisions of Article II of the Constitution.

Sincerely,

  
John Tower  
Chairman



ID # 217017 CUWHITE HOUSE  
CORRESPONDENCE TRACKING WORKSHEET

FE00201

☐ O - OUTGOING☐ H - INTERNAL☐ I - INCOMINGDate Correspondence  
Received (YY/MM/DD) 1/1/1Name of Correspondent: Mack Mattingly☐ MI Mail Report

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

Subject: Amendment to grant the President,  
by statute, line item veto authority

## 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>CU Holland</u>	<u>ORIGINATOR</u>	<u>DD 8410619</u>			<u>1/1/25</u>
<u>CU AT 18</u>	<u>A</u>	<u>DD 8410620</u>		<u>S</u>	<u>8410630</u>
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	Referral Note:				
		<u>1/1</u>			<u>1/1</u>
	Referral Note:				

## ACTION CODES:

A - Appropriate Action  
C - Comment/Recommendation  
D - Draft Response  
F - Furnish Fact Sheet  
to be used as EnclosureI - 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  
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Prime Subject Code: FE00201 Secondary Subject Codes: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

### PRESIDENTIAL REPLY

<u>Code</u>	<u>Date</u>	<u>Comment</u>	<u>Form</u>
C _ _	_____	Time: _____	P- _____
DSP	_____	Time: _____	Media: _____

#### SIGNATURE CODES:

CPn - Presidential Correspondence  
 n - 0 - Unknown  
 n - 1 - Ronald Wilson Reagan  
 n - 2 - Ronald Reagan  
 n - 3 - Ron  
 n - 4 - Dutch  
 n - 5 - Ron Reagan  
 n - 6 - Ronald  
 n - 7 - Ronnie

CLn - First Lady's Correspondence  
 n - 0 - Unknown  
 n - 1 - Nancy Reagan  
 n - 2 - Nancy  
 n - 3 - Mrs. Ronald Reagan

CBn - Presidential & First Lady's Correspondence  
 n - 1 - Ronald Reagan - Nancy Reagan  
 n - 2 - Ron - Nancy

#### MEDIA CODES:

B - Box/package  
 C - Copy  
 D - Official document  
 G - Message  
 H - Handcarried  
 L - Letter  
 M - Mailgram  
 O - Memo  
 P - Photo  
 R - Report  
 S - Sealed  
 T - Telegram  
 V - Telephone  
 X - Miscellaneous  
 Y - Study

June 15, 1984

Dear Senator Mattingly:

The President has asked me to thank you for your letter of June 5 and for your support in offering an amendment to grant the President, by statute, line item veto authority.

Let me assure you that the appropriate people have been contacted regarding your request that an opinion be obtained from the Attorney General regarding the constitutionality of such authority being achieved by statute. In the interim, please know that we appreciate your comments regarding the importance of line item veto authority to the budget process.

With best wishes,

Sincerely,

M. B. Oglesby, Jr.  
Assistant to the President

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

MBO/KRJ/tjr

cc: w/copy of inc to Bob McConnell, Legis  
Affrs, Justice - for DRAFT response  
cc: w/copy of inc to Fred Fielding - FYI



ACK MATTINGLY  
• GEORGIA



#217017

UNITED STATES SENATE  
WASHINGTON, D. C. 20510

June 5, 1984

The President  
The White House  
Washington, D.C. 20500

Dear Mr. President:

During the Senate debate on the Deficit Reduction Act, I offered an amendment to grant the President, by statute, line veto authority. The amendment was narrowly defeated, primarily because some members were concerned that such authority should be granted by a constitutional amendment rather than by legislation. Obviously, use of the line item veto would be expedited if the authority could be achieved by legislation, as opposed to the constitutional amendment route. To that end, I hope you will request an opinion from the Attorney General regarding the constitutionality of such authority being achieved by statute.

Enactment of the line item veto will be an important step in returning fiscal sanity to the budget process.

Sincerely,

A handwritten signature in dark ink, appearing to read "Mark Hatfield".

100-70412-1A-0-08

1984 JUN 19 AM 9:06



ID# 217017

THE WHITE HOUSE  
CORRESPONDENCE TRACKING WORKSHEET

FE002-01

INCOMING

DATE RECEIVED: JUNE 06, 1984

NAME OF CORRESPONDENT: THE HONORABLE MACK MATTINGLY

SUBJECT REQUESTS AN OPINION FROM THE ATTORNEY GENERAL  
REGARDING THE CONSTITUTIONALITY OF GRANTING  
THE PRESIDENT LINE VETO AUTHORITY

ROUTE TO: OFFICE/AGENCY (STAFF NAME)	ACTION ACT CODE	DATE YY/MM/DD	TYPE RESP	C D	COMPLETED YY/MM/DD
M. B. OGLESBY	ORG	84/06/06			
REFERRAL NOTE: <i>LA OGLE</i>					
REFERRAL NOTE: <i>attn Bob McConnell</i>					
REFERRAL NOTE: <i>see memo - dog</i>					
REFERRAL NOTE: <i>DD</i>					
REFERRAL NOTE: <i>DD</i>					

COMMENTS: *see FD # 255210 DD*

ADDITIONAL CORRESPONDENTS: MEDIA:L INDIVIDUAL CODES 1220 \_\_\_\_\_  
MAIL USER CODES: (A) \_\_\_\_\_ (B) \_\_\_\_\_ (C) \_\_\_\_\_

\*\*\*\*\*

*ACTION CODES:	*DISPOSITION CODES:	*OUTGOING	*
*	*	* CORRESPONDENCE:	*
*A-APPROPRIATE ACTION	*A-ANSWERED	*TYPE RESP=INITIALS	*
*C-COMMENT/RECOM	*B-NON-SPEC-REFERRAL	* OF SIGNER	*
*D-DRAFT RESPONSE	*C-COMPLETED	* CODE = A	*
*F-FURNISH FACT SHEET	*S-SUSPENDED	*COMPLETED = DATE OF	*
*I-INFO COPY/NO ACT NEC*		* OUTGOING	*
*R-DIRECT REPLY W/COPY *			*
*S-FOR-SIGNATURE *			*
*X-INTERIM REPLY *			*

\*\*\*\*\*

REFER QUESTIONS AND ROUTING UPDATES TO CENTRAL REFERENCE  
(ROOM 75, OEOB) EXT. 2590  
KEEP THIS WORKSHEET ATTACHED TO THE ORIGINAL INCOMING  
LETTER AT ALL TIMES AND SEND COMPLETED RECORD TO RECORDS  
MANAGEMENT.





U.S. Department of Justice  
Office of the Deputy Attorney General  
Executive Secretariat

---

Sally:

According to our  
office of Legislative  
affairs, OMB will  
not clear a position  
on the Deficit  
Reduction Act;  
consequently they  
cannot respond. The  
White House did an  
interim response.  
Does it require further  
action? Mary Louise  
9-21-84

P.S. It is very old.



THE WHITE HOUSE OFFICE  
REFERRAL

JUNE 20, 1984

TO: DEPARTMENT OF JUSTICE  
ATTN: BOB MCCONNELL

ACTION REQUESTED:  
DRAFT REPLY FOR SIGNATURE OF WHITE HOUSE STAFF MEMBER

DESCRIPTION OF INCOMING:

ID: 217017  
MEDIA: LETTER, DATED JUNE 5, 1984  
TO: PRESIDENT REAGAN  
FROM: THE HONORABLE MACK MATTINGLY  
UNITED STATES SENATE  
WASHINGTON DC 20510

SUBJECT: STATES THAT DURING THE SENATE DEBATE ON THE  
DEFICIT REDUCTION ACT HE OFFERED AN AMENDMENT  
TO GRANT YOU, BY STATUTE, LINE VETO AUTHOR-  
ITY. THE AMENDMENT WAS NARROWLY DEFEATED  
BECAUSE SOME MEMBERS WERE CONCERNED THAT SUCH  
AUTHORITY SHOULD BE GRANTED BY A CONSTITU-  
TIONAL AMENDMENT RATHER THAN BY LEGISLATION.  
URGES YOU TO REQUEST AN OPINION FROM THE  
ATTORNEY GENERAL ON THE CONSTITUTIONALITY OF  
SUCH AUTHORITY BEING ACHIEVED BY STATUTE.

PROMPT ACTION IS ESSENTIAL -- IF REQUIRED ACTION HAS NOT BEEN  
TAKEN WITHIN 9 WORKING DAYS OF RECEIPT, PLEASE TELEPHONE THE  
UNDERSIGNED AT 456-7486.

RETURN CORRESPONDENCE, WORKSHEET AND COPY OF RESPONSE  
(OR DRAFT) TO:  
AGENCY LIAISON, ROOM 91, THE WHITE HOUSE

SALLY KELLEY  
DIRECTOR OF AGENCY LIAISON  
PRESIDENTIAL CORRESPONDENCE

RECEIVED  
DEPT. OF JUSTICE  
JUN 25 11 00 AM '84  
EXECUTIVE SECRETARIAT  
OFFICE OF THE  
DEPUTY ATTORNEY GENERAL

LEGISLATIVE AFFAIRS  
JUN 25 2 47 PM '84

June 15, 1984

Dear Senator Mattingly:

The President has asked me to thank you for your letter of June 5 and for your support in offering an amendment to grant the President, by statute, line item veto authority.

Let me assure you that the appropriate people have been contacted regarding your request that an opinion be obtained from the Attorney General regarding the constitutionality of such authority being achieved by statute. In the interim, please know that we appreciate your comments regarding the importance of line item veto authority to the budget process.

With best wishes,

Sincerely,

M. B. Oglesby, Jr.  
Assistant to the President

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

MBO/KRJ/tjr

cc: w/copy of inc to Bob McConnell, Legis  
Affrs, Justice - for DRAFT response  
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#217017

UNITED STATES SENATE  
WASHINGTON, D. C. 20510

June 5, 1984

The President  
The White House  
Washington, D.C. 20500

Dear Mr. President:

During the Senate debate on the Deficit Reduction Act, I offered an amendment to grant the President, by statute, line veto authority. The amendment was narrowly defeated, primarily because some members were concerned that such authority should be granted by a constitutional amendment rather than by legislation. Obviously, use of the line item veto would be expedited if the authority could be achieved by legislation, as opposed to the constitutional amendment route. To that end, I hope you will request an opinion from the Attorney General regarding the constitutionality of such authority being achieved by statute.

Enactment of the line item veto will be an important step in returning fiscal sanity to the budget process.

Sincerely,

A handwritten signature in dark ink, appearing to read "MacR Mattingly", with a stylized flourish at the end.

THE WHITE HOUSE  
CORRESPONDENCE TRACKING WORKSHEET

ID# 217017

*FEDD2-01*

INCOMING

DATE RECEIVED: JUNE 06, 1984

NAME OF CORRESPONDENT: THE HONORABLE MACK MATTINGLY

SUBJECT REQUESTS AN OPINION FROM THE ATTORNEY GENERAL  
REGARDING THE CONSTITUTIONALITY OF GRANTING  
THE PRESIDENT LINE VETO AUTHORITY

ROUTE TO: OFFICE/AGENCY (STAFF NAME)	ACTION		DISPOSITION	
	ACT- CODE	DATE YY/MM/DD	TYPE RESP	C COMPLETED D YY/MM/DD
M. B. OGLESBY	ORG	84/06/06	<i>MD</i>	<i>84/06/15</i>
<i>GRD</i> REFERRAL NOTE: _____				
REFERRAL NOTE: <i>at Bob McConnell</i>				
REFERRAL NOTE: _____				
REFERRAL NOTE: _____				
REFERRAL NOTE: _____				
REFERRAL NOTE: _____				

COMMENTS: \_\_\_\_\_

ADDITIONAL CORRESPONDENTS: MEDIA:L INDIVIDUAL CODES 1220 \_\_\_\_\_  
MAIL USER CODES: (A) \_\_\_\_\_ (B) \_\_\_\_\_ (C) \_\_\_\_\_

\*\*\*\*\*

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*A-APPROPRIATE ACTION	*A-ANSWERED	*CORRESPONDENCE:	*
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*F-FURNISH FACT SHEET	*S-SUSPENDED	*CODE = A	*
*I-INFO COPY/NO ACT NEC*		*COMPLETED = DATE OF	*
*R-DIRECT REPLY W/COPY		*OUTGOING	*
*S-FOR-SIGNATURE			*
*X-INTERIM REPLY			*

\*\*\*\*\*

REFER QUESTIONS AND ROUTING UPDATES TO CENTRAL REFERENCE  
(ROOM 75, OEOB) EXT. 2590  
KEEP THIS WORKSHEET ATTACHED TO THE ORIGINAL INCOMING  
LETTER AT ALL TIMES AND SEND COMPLETED RECORD TO RECORDS  
MANAGEMENT.



June 15, 1984

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With best wishes,

Sincerely,

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Assistant to the President

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

MBO/KRJ/tjr

cc: w/copy of inc to Bob McConnell, Legis  
Affrs, Justice - for DRAFT response  
cc: w/copy of inc to Fred Fielding - FYI ✓





UNITED STATES SENATE  
WASHINGTON, D. C. 20510

June 5, 1984

The President  
The White House  
Washington, D.C. 20500

Dear Mr. President:

During the Senate debate on the Deficit Reduction Act, I offered an amendment to grant the President, by statute, line veto authority. The amendment was narrowly defeated, primarily because some members were concerned that such authority should be granted by a constitutional amendment rather than by legislation. Obviously, use of the line item veto would be expedited if the authority could be achieved by legislation, as opposed to the constitutional amendment route. To that end, I hope you will request an opinion from the Attorney General regarding the constitutionality of such authority being achieved by statute.

Enactment of the line item veto will be an important step in returning fiscal sanity to the budget process.

Sincerely,

A handwritten signature in dark ink, appearing to read "Mack Mattingly", with a stylized flourish at the end.

*JS*



UNITED STATES SENATE  
WASHINGTON, D. C.

6/19 JAB noted  
in R.F.  
Copy sent to "B"  
Fyi

MACK MATTINGLY  
GEORGIA

June 5, 1984

Mr. James A. Baker, III  
Chief of Staff  
The White House  
Washington, D.C. 20500

Dear Jim:

I thought you might be interested in the enclosed copies of letters I recently sent to the President and the Attorney General regarding my line item veto proposal.

Sincerely,

*Mack*

Enclosure



MACK MATTINGLY  
GEORGIA



UNITED STATES SENATE  
WASHINGTON, D. C. 20510

June 5, 1984

The Honorable William French Smith  
Attorney General  
Department of Justice  
Washington, D.C. 20530

Dear Mr. Attorney General:

During the Senate debate on the Deficit Reduction Act, I offered an amendment to grant the President, by statute, line veto authority. The amendment was narrowly defeated, primarily because some members were concerned that such authority should be granted by a constitutional amendment rather than by legislation. Obviously, use of the line item veto would be expedited if the authority could be achieved by legislation, as opposed to the constitutional amendment route. Therefore, I request an opinion from the Department of Justice regarding the constitutionality of such authority being achieved by statute.

Enactment of the line item veto will be an important step in returning fiscal sanity to the budget process.

Sincerely,

A handwritten signature in cursive script, reading "Mack Mattingly".

MACK MATTINGLY  
GEORGIA

UNITED STATES SENATE  
WASHINGTON, D. C. 20510

217017

FE 002-01

June 5, 1984

The President  
The White House  
Washington, D.C. 20500

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Sincerely,



Ogden  
9/15/84