

**United States Senate**

**REPUBLICAN POLICY COMMITTEE**

Larry E. Craig, Chairman

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## What's Next?

### **President Uses Line-Item Veto**

For the first time in the Nation's history, a President has used the power of a line-item veto to cancel discrete parts of bills that he otherwise approves. The President acted under authority of the Line Item Veto Act which a Republican Congress passed in the spring of 1996. The President struck the following provisions:

- Section 1175 of the Taxpayer Relief Act, Pub. L. 105-34 (H.R. 2014), would have allowed U.S.-based insurance companies, banks, and investment firms a one-year exemption on taxes on certain overseas income. The Joint Committee on Taxation (JCT) estimated that this provision would reduce revenues by \$94 million over Fiscal Years 1997-2002. (The President's cancellation message estimated \$317 million over five years.) The President said the provision would have allowed U.S. companies to "shelter income in foreign tax havens to avoid all U.S. taxation." This is "Cancellation No. 97-1."
- Section 968 of the Taxpayer Relief Act would have deferred taxes on the sale of an agricultural processing plant to a farmer-owned cooperative. The JCT estimated that this provision would reduce revenues by \$84 million over Fiscal Years 1997-2002. (The President's cancellation message estimated \$98 million over five years.) The President said that the provision was "well-intended" but "poorly designed." This is "Cancellation No. 97-2."
- Section 4722(c) of the Balanced Budget Act, Pub. L. 105-33 (H.R. 2015), would have approved the taxes that New York State imposes on health care providers to help finance its Medicaid program. These assessments are impermissible in every other state. CBO estimated that this provision would have cost the Federal Government about \$200 million in new direct spending in FY 1998. The President said the provision was "unfair to the rest of our Nation's taxpayers." This is "Cancellation No. 97-3."

Under the Line Item Veto Act, a President's vetoes stand unless a disapproval bill is *enacted into law*. In short, the President must either sign a bill that disapproves his own vetoes or the disapproval bill must be

enacted (by a two-thirds vote of each House of Congress) over the President's veto. As can be seen, the Line Item Veto Act gives a President significant clout.

Of course, there will be challenges to the constitutionality of the new law. An earlier challenge failed when the Supreme Court dismissed the case on procedural grounds (for lack of standing). Now that the President has used his new line-item veto power, there are persons who will have standing to sue.

**The Line-Item Veto Process.** The new line-item veto process begins when a President signs a bill. Once signed, the President has five days (Sundays excluded) to revisit a bill and cancel *in whole* any [1] "dollar amount of discretionary budget authority," [2] "item of new direct spending" (*e.g.*, the New York Medicaid provision), or [3] "limited tax benefit" (*e.g.*, the two tax provisions he vetoed). The Line Item Veto Act itself defines these terms in detail.

The President's line-item vetoes are packaged in a special veto message that is sent to Congress. That message must specify the dollar amounts involved, the reasons for the veto, its expected economic impact, and other information. Vetoed items are canceled as soon as Congress receives the message — and Congress received its first such message yesterday.

**What's Next in Congress?** There are numerous rules for expedited consideration of any bill of disapproval, and many of these rules are outlined in RPC's paper, "The Line Item Veto Act: A Two-Page Primer for the Senate Side" (July 24, 1997). To take advantage of the rules, opponents of the President's vetoes will introduce a disapproval bill within five days of Congress's reconvening. Generally, that bill will be acted on within 30 days of session. The procedural rules are written to try to keep disapproval bills free of amendments that do not relate directly to the vetoes themselves.

As emphasized above, a disapproval bill must become law. Once Congress has approved a conference report on a disapproval bill, it must be presented to the President who will either sign it into law, allow it to become law without his signature, or veto it. If vetoed, the disapproval bill returns to Congress but may become law if the veto is overridden by a two-thirds vote. If the veto is not overridden, then the disapproval bill does not become law and the President's original cancellations/line-item vetoes stand.

**What's Next in the Courts?** The Supreme Court held last month (before any line-item veto had been used) that individual Senators and Representatives could not challenge the constitutionality of the Line Item Veto Act because they lacked that *standing* that is required by Article III of the Constitution. *Raines v. Byrd*, -- U.S. --, 138 L. Ed. 2d 849 (decided June 26, 1997). Now that the President has acted, however, another challenge can be expected and there will be persons who do have standing to sue.

The Act itself provides for expedited judicial review: Any "Member of Congress or any individual adversely affected by" the Act may bring an action in the United States District Court for the District of Columbia. The decision of that court is appealable directly to the Supreme Court. Both courts are directed to "expedite to the greatest possible extent" any case that challenges the Act.

It is possible that the constitutionality of the Line Item Veto Act will be decided by the Supreme Court within a year. Many of the issues already have been briefed and argued. Before the Supreme Court acted, a federal district judge had held the Act unconstitutional. *Byrd v. Raines*, 956 F. Supp. 25 (D.D.C. 1997), *vacated and remanded with instructions to dismiss for lack of jurisdiction because plaintiffs lacked standing, Raines v. Byrd, supra*. The Senate and the House of Representatives joined the Department of Justice in defending the constitutionality of the Act.

[The Line Item Veto Act is Public Law 104-130, signed April 9, 1996 and effective January 1, 1997; it is codified at 2 USCA §691 *et seq.* (1997).]