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**INTERPRETING AND IMPLEMENTING ITEM VETO PROPOSALS**

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## INTERPRETING AND IMPLEMENTING ITEM VETO PROPOSALS

### INTRODUCTION

There has been a recent resurgence of interest in proposals that would allow the President to exercise an item veto; President Reagan made such a recommendation in his State of the Union address to Congress on January 25, 1984. These proposals have been advocated for a variety of reasons, including a need perceived by some proponents to redress once again the balance between presidential and congressional powers. However, there is one set of concerns that seems to be shared by virtually all those who have expressed support for giving the President item veto authority: a disquiet over the size and persistence of Federal budget deficits, and a concern that effective deficit control may require procedural or institutional change.

The President has the constitutional power to veto any bill or joint resolution (except joint resolutions proposing constitutional amendments), subject to the constitutional power of Congress to override that veto by a two-thirds vote of those present and voting in each chamber. Proposals for the item veto are provoked by the presumption that the President may not veto specific provisions of a measure; he must accept or reject it in its entirety. Item veto proposals generally are directed toward appropriations measures only. If the President were to have the authority to exercise an item veto, he could reject or perhaps reduce certain individual appropriations in a larger measure while approving the other provisions of that measure. Congress then would

have an opportunity to override the President's veto if it saw fit to do so (unless presidential disapproval took the form of a pocket veto).

Such proposals are neither new nor novel. The Constitution of the Confederate States of America included item veto authority, and forty-three State governors now can exercise an item veto to one extent or another. As early as 1876, a constitutional amendment was proposed in Congress to grant this power to the President. Similar proposals have been introduced in subsequent Congresses, and several hearings have been held on the subject. Presidents Grant, Hayes, and Arthur, and more recently, Presidents Franklin Roosevelt, Truman, and Eisenhower all made proposals for or resembling the item veto. Congress has given this power to territorial governors, including the Governor of the Virgin Islands as recently as 1954. In 1983, the Senate considered and tabled an amendment (to a debt ceiling bill) proposed by Senator Dixon of Illinois to express the sense of the Senate in favor of presidential item veto authority.

#### THE NECESSITY FOR A CONSTITUTIONAL AMENDMENT

Proposals for a presidential item veto usually have taken the form of constitutional amendments—for example, in the 98th Congress, S.J. Res. 26, introduced by Senator Dixon, and H.J. Res. 404, introduced by Representatives Archer, Kemp, and others.

Nonetheless, some have argued that a constitutional amendment may not be required. The President may veto any "bill," but the meaning of this term is not defined in the Constitution itself, nor was its intended meaning discussed in the debates of the Constitutional Convention as they were recorded and published. It has been contended that the authors of the Constitution assumed or would have expected that a bill would consist of a single proposition or

a series of propositions on the same or related subjects. If this argument is accepted, it is then possible to conclude (1) that many of the measures presented to the President consist of more than one "bill," and (2) that the President may sign most of a measure while vetoing one or more of its parts (construed to be separate bills) that are unrelated to the main purpose of the measure.

No President has asserted this power directly, and a challenge would almost certainly arise if any President were to do so, even if Congress were to sanction the action by statute or by a "sense of the Congress" resolution. Moreover, the exercise of such a power could raise difficult questions about the appropriate standard of relatedness, perhaps akin to congressional standards of germaneness, and any such standard probably would be broad enough to protect the various appropriations within a defense appropriations bill, for example, from separate action by item veto. But these conceptions of a bill and the proper scope of legislation have given rise to the argument that, even if a constitutional amendment is necessary to create an item veto power, such an amendment would only restore to the President the veto power originally envisioned by the authors of the Constitution--a power that has been eroded by Congress' tendency to enact measures which encompass more than one subject, including bills which appropriate for more than one agency or purpose.

Assuming that a constitutional amendment is considered necessary, the process of ratifying an amendment could significantly limit the utility of the item veto as a device for shaping short-term fiscal and spending policies. To date, all constitutional amendments first have been approved by Congress; then they have been submitted for ratification by three-fourths of the States. Recent joint resolutions proposing constitutional amendments have provided a maximum of seven years for State ratification. The ratification process need

not require the full seven years, depending on how quickly the States act. In the recent case of the proposed Equal Rights Amendment, on the other hand, Congress extended the ratification deadline for an additional three years.

Thus, a constitutional amendment providing for presidential item veto authority could not be implemented as soon as it is approved by the House and Senate. It might require as many as seven years before the President could exercise the authority, assuming that a sufficient majority of States eventually were to ratify the amendment. Moreover, the President has no direct and formal role in the constitutional amendment process. Constitutional amendments are approved by Congress in the form of joint resolutions which are sent directly to the States for their consideration. These joint resolutions are not submitted to the President and, therefore, are immune from his existing veto power.

Once ratified, a constitutional amendment cannot be changed directly by statute (although the amendment might authorize Congress to enact implementing legislation). A future Congress could not directly prevent the President from exercising item veto authority given to him by constitutional amendment if the budgetary or political situation changed or if simple majorities of those present and voting in that Congress did not approve of the specific ways in which the President exercised his power. If a future Congress were to conclude that it had lost some fiscal control that it wished to regain, that Congress might be compelled to propose to the States a second constitutional amendment revising or repealing the first. There is precedent for doing so in the case of Prohibition. But this experience contributed to a widespread reluctance to support constitutional amendments except to achieve goals of fundamental importance that cannot be achieved effectively by statute.

A somewhat different approach was proposed by Representative Keating of New York in 1957. The constitutional amendment he introduced would have authorized

Congress to enact a law permitting the President to exercise an item veto. Under this amendment, the item veto would have been a statutory, not a constitutional, power. This approach would allow a subsequent Congress to repeal the authority, although a two-thirds vote probably would be required to override a presidential veto of the repeal.

#### THE SCOPE OF PRESIDENTIAL ITEM VETO AUTHORITY

Proposals for the item veto are related to concerns about present Federal fiscal policies and spending controls. These proposals also raise fundamental and historically recurring questions about Congress' exercise of its constitutional "power of the purse," the appropriate use of the veto power, and, more generally, the optimal allocation of powers between Congress and the President. The advantages and disadvantages of such proposals may be debated in the abstract. However, evaluations of specific proposals for constitutional amendments may depend on an examination of the scope of the authority that the President would receive, and how this authority could be interpreted and implemented.

Therefore, in considering each proposal for an item veto by constitutional amendment, Congress might consider questions such as whether the item veto authority would (1) apply to legislative provisions as well as to provisions making appropriations, (2) apply only to provisions of appropriations measures or also to provisions having the effect of appropriations that are contained in other measures, (3) include the power to reduce as well as to reject appropriations, and (4) extend to permanent appropriations, proposals to create or modify entitlement programs, and appropriations to fund existing entitlements.

Legislative Provisions

Appropriations measures generally do more than provide new budget authority. These bills and joint resolutions frequently include provisions that affect program operations and agency authority in other ways—for example, by earmarking certain funds for specific purposes, by making a permanent change in existing law, or by imposing some limitation on the manner in which the appropriated funds may be used during a fiscal year. Most of the "general provisions" that appear in regular appropriations bills are not controversial, but specific limitations or legislative provisions may provoke more debate and disagreement than the levels of appropriations themselves. For example, a limitation amendment may be proposed and supported as the only available device by which a difficult and divisive issue such as abortion can be brought to the floor for House or Senate action.

A constitutional amendment giving the President item veto authority with respect to appropriations bills might be written or interpreted to extend to provisions in such bills that do not provide new budget authority, or that do more than provide new budget authority. Constitutional amendments have been introduced that would allow the item veto to be applied only to "any item of appropriation," but this term may require clarification. Would it apply only to provisions that make appropriations, or would it apply to all provisions of appropriations bills, including provisions that do not appropriate? Could the President veto a limitation on the use of funds that are appropriated elsewhere in the same bill? Some have advocated the item veto in the past precisely because of provisions in appropriations bills that were considered extraneous. Thus, limiting the scope of item veto authority to provisions of appropriations bills that actually make appropriations might not meet all the objectives of those supporting the proposal.

If the item veto applied to more than provisions making appropriations, Congress might find it less useful to attach limitations and legislation to appropriations bills--including continuing resolutions, which are not considered general appropriations bills in the House and thus are not subject to the prohibition against including changes in existing law. Moreover, even if the item veto authority were limited to provisions making appropriations, the authority still might apply separately to language in such provisions that restricts or controls the use of part or all of the appropriation. If so, Congress might limit the application of the item veto by separating dollar amounts from accompanying legislative language and placing them in different paragraphs of the same appropriations measure.

#### Appropriations Not in Appropriations Measures

Clause 5 of House Rule XXI generally prohibits appropriations in measures reported from committees other than the House Appropriations Committee. (The Senate has no comparable prohibition, but generally follows the same practice.) This issue arises most often when a provision of, or an amendment offered to, a bill reported from another committee has the effect of appropriating, without doing so directly. For example, the Parliamentarian's commentary on Clause 5 in the compilation of House Rules includes the following:

An amendment expanding the definition in existing law of recipients under a federal subsidy program was held to permit a new use of funds already appropriated in violation of this clause. . . and a provision in a legislative bill authorizing the use, without a subsequent appropriation, of funds directly appropriated by a previous statute for a new purpose constitutes an appropriation prohibited by this clause.

It is possible that an item veto amendment might extend to such matters if, for example, the President were empowered to "disapprove any item of appropriation in any Act or joint resolution," as has been proposed. If so,

the veto might apply only to the provision that is considered an appropriation; it is less likely but possible that the veto might even apply to all provisions in any bill that is "tainted" because it includes one or more items that are deemed to be appropriations. In either case, Congress might consider whether the scope of the President's constitutional authority would be affected by how the House has interpreted one of its own rules, and whether such a situation would be advisable.

Alternatively, the item veto might be limited only to items of appropriation or all matters that appear in appropriations bills. But because most appropriations bills include some non-appropriations provisions, problems of definition might still arise. Moreover, Congress might then have the recourse of avoiding an anticipated item veto by directing in a legislative bill that funds already appropriated be used for a new purpose. If so, the President could find that his only options would be to sign or veto that legislative measure as a whole.

#### Reducing or Disapproving Appropriations

A constitutional amendment could limit the President to either approving or disapproving, but not modifying, each provision that is subject to the item veto. Thus, if Congress appropriated more for an account than the President thought necessary or desirable, he could approve the appropriation or he could veto it. In the latter case, no money would be appropriated for that account unless Congress voted to override the veto or passed a second bill including a different appropriation for the account. This approach could limit the value of the item veto to the President; he might not want to veto all funding for an account because he thought the funding level approved by Congress was too high.

Alternatively, therefore, a constitutional amendment could also grant or imply the power to reduce an item of appropriation. If the authority were cast in these terms, the issue often would not be whether or not to appropriate, but at what level to appropriate. If Congress appropriated \$3 million for some purpose, the President presumably would be able to approve \$2 million and veto the remaining \$1 million. Congress then could decide whether to insist on its original funding level by voting to override the President's veto. This authority to veto part of an appropriation would be a more flexible device, and, therefore, one that might be used more frequently than an item veto limiting the President's choices solely to approval or disapproval.

There is another reason that the President might use an item veto authority more often if he were empowered to reduce as well as disapprove appropriations. Appropriations bills sometimes are not enacted until shortly before the start of the new fiscal year; in other instances, continuing resolutions have been signed into law on the very day that the authority of Federal agencies to obligate funds for certain purposes would otherwise expire. Under either of these circumstances, a President might hesitate to disapprove an appropriation because, if Congress did not override the veto, the programs to be funded through the vetoed appropriation might be brought to a halt while the two branches negotiated over a more acceptable funding level.

On the other hand, if the President could exercise his item veto authority by reducing the program's appropriation, there would be funds for administering the program, either at the level approved by Congress or at the level proposed by the President, depending on whether or not Congress voted to override the President's veto. More generally, an item veto in either form might reduce the risk of last-minute conflicts between the two branches over appropriations bills

and continuing resolutions, because the President would not have to veto the entire measure if he were intractably opposed to just one or several of its provisions.

Including in an item veto amendment the authority to reduce appropriations could raise a more general issue as well. If the President could only approve or disapprove the appropriation for a program, the "power of the purse" would essentially remain with the Congress. In case of an item veto, Congress would then have to propose a different (and presumably lower) funding level, but the program could be funded only at a level approved by Congress, either initially or in response to an item veto. On the other hand, if the President were given the power to reduce a program's appropriation, he could set a program funding level lower than Congress had approved, unless his veto were overridden. The significance of this difference could depend, in turn, on the majorities required in Congress to override an item veto.

If the President were empowered to veto parts of appropriations, additional questions might arise. An amount that is stated in an appropriations bill generally is intended to fund a number of activities and program components. More detailed statements about how Congress anticipates that the appropriated sum will be allocated among these activities and program components generally appear in Appropriations Committee reports, floor debates, and joint explanatory statements accompanying conference reports. But none of these expected allocations have the force of law. If the President were to exercise his item veto authority by reducing an appropriation, there could be questions about how that reduction is to be applied.

For example, the conference report on the defense appropriations bill for FY 1984 provided \$6.914 billion for "Other Procurement, Air Force." The joint explanatory statement accompanying the report included a table depicting how

the conferees anticipated that the total would be allocated among a variety of activities and programs, including a conference agreement on \$11.8 million for the "Chemical/biological defense program." The conferees also stated how they expected that \$11.8 million to be allocated:

The conference agreement provides \$2,500,000 for procurement of chemical masks (including the XM-30 series if desired), \$5,300,000 for decontamination equipment, \$2,000,000 for commercial cooling vests, and \$2,000,000 for liquid agent detectors.

If the President were to exercise an item veto to reduce the appropriation for "Other Procurement, Air Force" by \$2.0 million, would this have to be a pro rata reduction among all the programs and activities within this account, or could he specify that the reduction was to apply solely to the chemical/biological defense program, and then only to the procurement of liquid agent detectors? If the reduction could be targeted and not simply pro rated, would the President be obliged to identify in his veto message precisely how the reduction would be applied?

If an item veto amendment permitted the President to reduce as well as disapprove appropriations, the utility of this power might depend in part on whether he could make only pro rata reductions in a lump-sum appropriation or whether he could specify the activities or programs to be affected by the reduction. The ability to specify probably would make the item veto a more potent instrument, in that it could be used more selectively. But if an appropriations bill only provides a single sum for an account, it might not be considered appropriate for the President to be able to specify reductions for certain programs and activities within the account, because these reductions presumably would be based on allocations that might or might not appear in committee reports and statements of conferees and that were never specifically approved by Congress.

On the other hand, if the President could only make pro rata reductions in an appropriations account, he would often be placed in the position of having to reduce funding for programs within the account that he supports in order to reduce funding for other programs that he does not support. In turn, Congress might attempt to protect certain programs and activities by funding them through even broader lump-sum appropriations, so that any pro rata reduction would have less effect on the favored programs.

#### Permanent Appropriations and Entitlements

A considerable part of annual Federal spending is not directly controllable through congressional and presidential action on annual appropriations bills. Although estimates and criteria vary, the Congressional Budget Office has estimated that 55.6 percent of budget authority for FY 1984 is not controllable through the annual appropriations process. This situation raises questions about how much impact an item veto could have on annual Federal spending levels and on how item veto authority would be defined and applied.

There are permanent appropriations for some Federal expenditures, such as interest payments on the national debt. Funds for these interest payments are not included in any of the annual appropriations bills; instead, permanent statutory authority has been enacted for these payments to be made from funds in the Treasury that are not appropriated for other purposes. An item veto amendment presumably would not enable the President to reduce spending for which there already is a permanent appropriation and that is not the subject of further legislation. But how might his item veto authority affect legislation that would create a new permanent appropriation or affect an existing permanent appropriation?

Could the President use the item veto to disapprove a new permanent appropriation, even if it were a provision of a bill that was not primarily an appropriations bill? Could he apply the item veto to a provision in a bill that did not appropriate funds directly but that did affect spending levels more indirectly by changing some program or activity for which there already was a permanent appropriation? If a bill included a permanent appropriation at a stated dollar level for each fiscal year, could he use the item veto to reduce that level? If a bill included a permanent appropriation for such sums as may be necessary for an activity or program, could the President employ the item veto to impose a ceiling on annual spending for that activity or program?

Other components of annual Federal spending are considered relatively uncontrollable because of laws that have created entitlements—typically, laws that entitle persons or entities meeting certain eligibility criteria to receive certain benefits. The costs of such programs are controlled by changing the law that established the entitlement or that set the eligibility standards and benefit levels. Some entitlements are funded through permanent appropriations, such as permanently appropriated trust fund receipts that are made available to pay certain social security benefits. Other entitlements are funded through annual appropriations, but Congress generally has concluded that it has little choice but to appropriate whatever amount is estimated to be necessary to meet anticipated claims for payments. Whether or not an entitlement is funded through the annual funding process, it is generally not considered to be controllable through that process.

How could an item veto be used to affect entitlement programs, if at all? Would the item veto apply to a bill that created a new entitlement program or that eased eligibility criteria or increased benefit levels for an existing

entitlement? If the item veto permitted the President to reduce as well as to disapprove, could he reduce the cost of an entitlement program by revising the bill's provisions affecting eligibility, benefits or cost-of-living increases? Could the President reduce funding for an entitlement in an appropriations bill to a level below the estimated costs of the program?

If bills creating or changing entitlements, or such provisions in a reconciliation bill, were subject to an item veto, the President could be empowered to do far more than to reduce or disapprove dollar amounts in appropriations bill. Might he be able to revise entitlement bills approved by Congress so long as his revisions would have the effect of reducing the costs of the entitlement? If so, would there be any standard comparable to a germaneness test to limit this power to reduce costs by revising eligibility and benefit provisions? If the President could reduce or disapprove annual appropriations for entitlements, would entitlements then become programs that provide benefits only to the extent that the President approves funds that are sufficient to provide those benefits?

Most discussions of item veto authority assert or imply that it would not extend to bills affecting or creating entitlements, or to appropriations for entitlements. However, if entitlements and appropriations for entitlements were beyond the reach of the item veto, then much or even most annual Federal spending could not be prevented or limited by this device. Some have argued that creating a program in the form of an entitlement gives that program an advantage in periods of budget stringency, compared to programs whose costs can be controlled through the annual appropriations process. Subjecting discretionary funding to the threat of an item veto while exempting entitlement funding from that same threat might only increase this advantage. As a result, Congress might be tempted to transform more programs into entitlements, use other "backdoor" spending devices, or try to accomplish the same policy goal through tax expenditures, in order to

protect against the possibility of an item veto. Such a development could have the eventual effect of making annual Federal spending more difficult to control.

#### OVERRIDING AN ITEM VETO

The impact of an item veto amendment on congressional control of Federal spending and the allocation of power generally between Congress and the President also would depend in part on the amendment's provisions for Congress to override an item veto.

The Constitution now provides that a presidential veto may be overridden by a two-thirds vote of those present and voting in the House and a two-thirds vote of those present and voting in the Senate (assuming a quorum is present in each chamber). A constitutional amendment could provide for Congress to override an item veto by the same two-thirds vote or by some other extraordinary majority. The effect of this requirement might depend on the way in which the President was empowered to exercise his item veto authority.

If the President could only approve or disapprove an item of appropriations (or some other matter, as discussed in the preceding section of this report), there might be a significant possibility of delay or stalemate if two-thirds votes in the House and Senate were required to override the veto. If such majorities could not be assembled, Congress would have to develop, debate and pass new legislation at lower funding levels supported by both the President and by majorities in the two chambers. Until some agreement was reached, there might be no funding available for the activity or program for which appropriations had been vetoed. Some contingency arrangements could be made in anticipation of this potential problem, such as statutory authority for the activity or program to continue at last year's funding level. However, as with

proposals for a permanent continuing resolution or its equivalent, such arrangements would not be neutral in that they might well encourage inaction by Congress or further item vetoes by the President.

Delay or stalemate would be far less likely, assuming a two-thirds vote were necessary to override, if the President exercised the item veto by reducing an item of appropriations, but not disapproving it altogether. Then the activity or program would be funded at the level approved by the President unless Congress voted to override the veto. The level of funding would be in doubt only until Congress completed action on the President's veto. On the other hand, requiring a two-thirds vote to override a presidential item veto to reduce an appropriation would have the effect of enabling the President and a minority of one-third plus one in either the House or the Senate to set funding levels lower than those supported by majorities in both chambers.

Alternatively, a constitutional amendment could provide for an item veto—either to disapprove only or to disapprove or reduce—that could be overridden by a simple majority vote in the House and Senate. This approach would significantly reduce the power of the item veto, because it could be overridden by the same majorities that approved the bill in the first place. Historically, Congress has found it difficult to enact legislation by two-thirds votes over the President's veto; since World War II, Congress has overridden less than one in five presidential vetoes. This excludes pocket vetoes that cannot be overridden because Congress is no longer in session, and there is reason to anticipate that Presidents would have opportunities to exercise pocket item vetoes since some appropriations bills, including continuing resolutions, have been passed by Congress shortly before it adjourned. (There are disagreements over the proper use of the pocket veto that are beyond the scope of this report.)

If Congress could override the President by simple majority vote, the item veto would be only a suspensive veto that requires Congress to reconsider its earlier decision. But its effect could still be powerful. Even if only simple majorities were required to override, the item veto could isolate individual provisions for separate congressional action. One of the arguments made in favor of the item veto is that the process of bargaining and accommodation in Congress--sometimes described derogatorily as log-rolling--results in legislation that includes specific matters which could not stand on their own merits. This argument has been applied especially to funding for public works activities described critically as "pork barrel" projects. Advocates of the item veto have asserted that majorities in Congress would not support many of these projects (and comparable matters) when confronted with a presidential item veto.

The other side of this argument is that the item veto could disrupt the process of compromise that characterizes the legislative process. When Congress votes to pass a bill, it votes on the package of provisions in that bill, and some of those provisions may have been included intentionally to increase support for the bill among Representatives and Senators. It may be true that the lack of an item veto can put a President in the awkward position of having to approve or disapprove a bill in its entirety, and that Congress can take advantage of this situation by including provisions the President opposes in bills he ardently desires. But it is also true that the item veto would put at potential risk many of the legislative packages that Congress approves.

In some instances, Representatives or Senators might hesitate to vote for a bill without having received assurances that the President would not employ the item veto against the provisions of greatest importance to each of them. The result might be greater delays in congressional action, as Members anticipate the President's possible uses of the item veto and as they seek to commit him

to a course of action before the bill reaches his desk. Such bargaining would be most likely when the provisions at issue are the kind of legislative matters that some advocates of the item veto oppose--matters which might not receive sufficient support in Congress if considered separately.

One final question about congressional overrides of item vetoes deserves brief mention. If a President were to apply the item veto against three provisions in a single bill, would Congress vote separately on each of these provisions, or would each chamber cast one vote to override the veto of all three provisions? Separate votes might enhance the utility of the veto by causing separate votes on items that might not receive sufficient support in Congress when standing alone. A single vote on all the vetoed provisions would not have the same effect and might make overrides somewhat more frequent.

#### THE POSSIBILITY OF A STATUTORY ALTERNATIVE

Many, perhaps most, of the questions raised in the preceding sections could be resolved as a constitutional amendment is debated and passed; others might be the subject of separate implementing legislation, perhaps to avoid burdening the Constitution with excessive detail about fiscal policy-making procedures that may change in time. Still other questions may prove to be hypothetical in practice. However, the prospective limitations of, and some of the questions concerning, an item veto by constitutional amendment may encourage the search for a statutory alternative that could achieve much the same purpose and result.

For example, during the 1960s and 1970s, Congress several times considered imposing a statutory ceiling on expenditures during a particular fiscal year, and giving the President some discretion to enforce the ceiling. More recently, the Senate considered but did not approve two 1983 proposals: one would have

authorized the President to reduce spending so as to prevent monthly or quarterly debt ceiling limits from being exceeded; the other would have mandated an across-the-board reduction in discretionary budget authority if Congress failed to act after receiving rescission recommendations from the President.

The second of these 1983 proposals was predicated on the provisions of Title X (the Impoundment Control Act) of the Congressional Budget and Impoundment Control Act of 1974, under which the President may propose that certain appropriations be rescinded. After the President proposes some appropriated funds for rescission, the Congress has forty-five days within which to pass a bill or joint resolution approving part or all of the rescission. If Congress fails to pass such a measure (or to include the rescission in another measure, such as a regular or supplemental appropriations bill) within the forty-five day period, the Act requires that the funds be released for obligation.

Instead of amending the Constitution, Congress could consider proposals to revise these rescission procedures to give the President increased impoundment authority that would approximate the authority he could exercise with an item veto. As one example of such an approach, Title X might be amended to provide that a rescission proposed by the President becomes effective immediately and that it remains in effect unless and until Congress disapproves it by bill or joint resolution. Any such measure could be vetoed by the President, and in turn, the veto could be overridden by a two-thirds vote of the House and Senate.

If enacted and held constitutional, such a procedure would permit the President to reduce spending for particular purposes with the support of one-third plus one of the Members of either chamber. The procedure presumably would apply only to dollar amounts and not to legislative language accompanying appropriations, and it might not apply to appropriations for entitlement programs

without additional statutory authority. The President could propose to reduce funding for a program or to eliminate it altogether, and he might identify the specific activities for which the funds would otherwise be spent. In short, increasing the President's impoundment authority might achieve some of the purposes of an item veto, although it could also be subject to some of the same limitations.

This or any other statutory approach could be implemented more quickly than a constitutional amendment, and it would require approval only by majority vote of Congress and by the President. A statute could specify procedures, criteria, and exceptions in more detail than might be appropriate in a constitutional amendment. At the same time, it would be a more flexible device in that it could be amended by a subsequent statute as circumstances dictated.

At the same time, such a statutory approach might not be immune to some of the problems that could arise under a constitutional amendment. It could be difficult to apply increased rescission authority to entitlement programs and to other programs for which there is a permanent appropriation in law. Legislation and limitations in appropriations bills and provisions having the effect of appropriations (pursuant to clause 5 of House Rule XXI) would not be covered if Title X were amended merely to make rescissions subject to congressional disapproval by bill or joint resolution, rather than to approval by the same means. Moreover, increasing the President's rescission authority might have effects on the dynamics of the legislative process, both within Congress and between Congress and the President, that were raised as possibilities under an item veto constitutional amendment.

If one advantage of a statutory approach is that it could be amended to meet changing circumstances, that might also prove to be one of the most powerful arguments against such an alternative to a constitutional amendment.

If congressional majorities became dissatisfied--for reasons of fiscal policy or program priorities--with the President's exercise of his increased impoundment authority (a likely contingency), they could attempt to repeal or reduce that authority. Any such change might have to be enacted over the President's veto, but it would still be easier to revoke authority granted by statute than authority embedded in the Constitution.

### CONCLUSION

Congressional assessments of the general advantages and disadvantages of giving the President item veto authority by constitutional amendment will be accompanied by an examination of how specific proposed amendments (or statutory alternatives) might be interpreted and implemented. What would be affected and what would be immune? How might Congress and the President react? For example, would frequent use of an item veto be precluded by prior consultations and negotiations by which the President's intentions were made known before legislation was submitted to him? Or might Congress be tempted to appropriate for certain purposes, or to increase some appropriations levels, in expectation and perhaps even the hope of a presidential item veto?

In reviewing the institutional changes that Congress has made during the last decade or more, there is probably one conclusion that almost all Representatives and Senators would share: change brings with it unanticipated consequences. This is not a reason to resist all change. But it does indicate the importance of trying to anticipate and assess the consequences of proposed changes, such as for a presidential item veto. This report has sought to identify some of the inter-related issues and questions likely to arise during the course of such an assessment.