[BEST BRIEF]

No. 97-100455

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1997

Franklin D. RAINES, Office of Management and Budget,
Petitioner

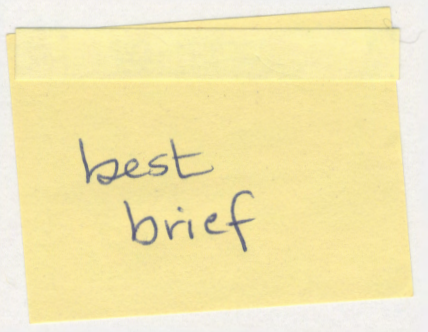
v.

Austin REED, Respondent

ON WRIT OF CERTIORARI TO THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF DAVIS

BRIEF FOR RESPONDENT

Counsel for Respondent



September 1997

QUESTIONS PRESENTED

1. Does the Line Item Veto Act violate the Presentment Clause of the United States Constitution by empowering the President to unilaterally make laws in circumvention of Article I procedures?

2. Does the Line Item Veto violate the non-delegation doctrine by conferring an undelegable lawmaking authority to the executive branch?

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STATEMENT OF THE CASE

On September 25, 1996, Congress passed the Omnibus Consolidated Appropriations Act, 1997, Pub L. No. 204-208, 210 Stat. 3009 (1996), which the President signed five days later on September 30, 1997. Immediately after the law's enactment, the President exercised his powers pursuant to the Line Item Veto Act, Pub. L. No. 204-130, 210 Stat. 1200 (1996) codified at 222 U.S.C. § 691 et. seq. ("the Act), by sending a special message to Congress indicating his veto of two items of direct spending. The first item concerned an appropriation of $8,500,000. to the University of Davis for construction of an environmental technology facility. The other regarded expenditures authorized for the Davis Mountain Wildlife Refuge in the amount of $1,500,000. for the conservation and protection of a herd of long-horned cattle residing on the refuge.

Following the President's exercise of cancellation authority, Respondent Austin Reed brought suit against the Comptroller of the Currency in the District Court for the Western District of Davis seeking a declaration that the Line Item Veto act is unconstitutional. As Director of the Board of Trustees of the University of Davis, Respondent Reed represented the institutional interests damaged by the President's cancellation of funds. Respondent Reed argued in the court below that the Act violates the Presentment Clause in allowing the President to sign a bill into law without actually approving all of its contents. The government responded with its contention that no violation of the Presentment Clause transpired since only the act of signing a bill made it into a law. Respondent Reed argued further that the Act violates the non-delegation doctrine because it constitutes cession of basic legislative authority by Congress to the President. In response, the government asserted that the Act merely codified the President's traditional power of

impoundment with minor modifications to the Impoundment Control Act, 2 U.S.C. §682 et seq. (1994) ("the ICA").

In its opinion, the district court rejected the Respondent's Presentment Clause argument, but nonetheless found the Act in violation of the clause on the grounds that the act of cancellation exercised under the Act was itself legislation subject to the requirements of bicameralism and presentment. The court further held the Act to be in violation of the non-delegation doctrine. Despite the presence of an intelligible principle, the Act is unconstitutional because it transfers the power to shape the contents of a statute from the Congress to the President.

Petitioner Alice Horton, director of the Davis Mountain Wildlife Refuge, brought a similar suit seeking declaratory relief in the District Court for the Eastern District of Davis on December 1, 1996. After entertaining essentially the same arguments as made by the parties in *Reed*, the district court reached opposite conclusions. The court rejected Petitioner Horton's Presentment Clause argument, holding that the cancellation power represented a statutory grant of discretion to the President in administering duly enacted appropriations law, and is best understood as an extension of the President's historical impoundment power. Furthermore, the court held that the Act poses no non-delegation doctrine problems since it contains adequate guidance for the Executive in his exercise of statutorily conferred discretion.

Petitioners Raines and Horton file petitions for writ of certiorari directly pursuant to § 691(e)(3) of the Act. This court granted both petitions and consolidated the cases on September 2, 1997. [redacted]

SUMMARY OF THE ARGUMENT

The Line Item Veto Act is unconstitutional in two related ways. First, the Act violates the Presentment Clause and the Article I procedure for lawmaking by expanding the President's role in the process beyond that prescribed by the Framers. The Constitution limits the President's legislative functions to approval or disapproval of laws presented to him by Congress and recommendations to Congress for laws he deems necessary. Under the Act, the President enjoys the power to alter the content of an appropriations statute which his own signature made into law. This ability to unilaterally repeal a valid legal obligation can be seen in no way other than as the power to legislate, since the power of repeal belongs exclusively to Congress. The fact that the President must interpret the statute and exercises discretion under its directives does not make the repeal power executive in nature. In order to ascertain the true import of the cancellation power, one must evaluate its effect upon the underlying appropriations bill. While the President executes with regard to the Act, he legislates with respect to the canceled appropriations provision. The constitutionality of the former action cannot be construed as to immunize the latter effect from invalidation.

The Act also violates the non-delegation doctrine because it confers naked legislative power. Governance requires cooperation between the three branches, but that cooperation violates the Constitution where it crosses the line between cooperation and abdication. Whether or not the Act contains principles sufficient to ensure that the Executive effects Congress's will in his selection of appropriations for cancellation, the Act remains naked legislation vis-a-vis the canceled appropriation. Cancellation serves neither of the purposes recognized by this Court as underlying the frequent exceptions to the non-delegation doctrine.

ARGUMENT

I. THE LINE ITEM VETO ACT VIOLATES THE PRESENTMENT CLAUSE BY IMPERMISSIBLY EXPANDING THE EXECUTIVE'S LAWMAKING ROLE.

A. THE CONSTITUTION PRESCRIBES A LIMITED ROLE FOR THE PRESIDENT IN LAWMAKING.

The men who drafted the Constitution did not haphazardly assign the functions of government, but instead made a series of deliberate choices regarding the legislative power culminating in "a single, finely wrought and exhaustively considered procedure." *INS v. Chadha*, 462 U.S. 919, 951 (1983). Those choices and their consequent embodiment in the structure and substance of the document they produced were to serve as "self-executing safeguard[s] against the encroachment or aggrandizement of one branch at the expense of the other." *Buckley v. Valeo*, 424 U.S. 1, 122 (1976). While vesting "[a]ll legislative powers" in a bicameral Congress, U.S. Const. art. I, § 1, the Framers empowered the President to prevent congressional enactments from taking effect through exercise of the veto power. U.S. Const. art. I, § 7, cls. 2-3. Through informed usage of this power, the executive branch may protect itself from usurpation and diminution of its power, and generally effect the Framer's intentions of securing liberty to the people by "checking whatever propensity a particular Congress might have to enact oppressive, improvident, or ill-considered measures." *Chadha*, 462 U.S. at 947-48. *See also Bowsher v. Synar*, 478 U.S. 714, 722-23 (1986); *Mistretta v. United States*, 488 U.S. 361, 380-82 (1989); *Metropolitan Washington Airports Auth. v. Citizens for the Abatement of Aircraft Noise, Inc.*, 501 U.S. 252, 272-77 (1991).

While the President fulfills a vital function in the legislative process, the Constitution

unmistakably evinces the Framer's intention to relegate the Executive to a supporting role. Both the structure of the constitutional text and the substance of the affirmative powers granted to the President demonstrate that the legislative process revolves around Congress. First, the Framers chose to incorporate the veto power within the provisions of Article I, which outlines the powers of Congress, as opposed to Article II, which enumerates the powers of the executive branch. This placement emphasizes the defensive nature of the veto power and underscores that the President functions as an adjunct and not a principal in the lawmaking process. Furthermore, while the Presentment Clause employs mandatory language, commanding the President to act, U.S. Const. art. I, § 7, cl. 2 ("If he approve he shall sign it, but if not he shall return it"), subsequent language attenuates the necessity of such action. Since a bill may become law through either a congressional override of the President's veto or through presidential inaction, U.S. Const. art I., § 7, cl. 2, the Constitution does not make executive approval an indispensable prerequisite for the creation of legal obligations. In light of these provisions, the Presentment Clause should be viewed as an affirmative duty imposed upon Congress as opposed to a responsibility incumbent upon the President; the President may choose to do nothing, but the Congress must always extend the opportunity.

A juxtaposition of the prescriptions of Article II against Article I underscores the reactionary role the Framers envisioned for the Executive. Article II, § 1 states unequivocally that "[t]he executive Power shall be vested in a President of the United States of America." U.S. Const. art II, § 1, cl. 1. The third section of Article II encapsulates the essence of the President's responsibilities in its pronouncement that "he shall take Care that the Laws be faithfully executed." U.S. Const. art. II, § 3. Section 3 also contains the only reference to presidential

participation in the legislative process beyond the optional veto power: "He shall . . . recommend to their Consideration such Measures as he shall judge necessary and expedient." U.S. Const. art. II, § 3. Justice Black has succinctly rendered the import of these provisions in their totality:

> In the framework of our Constitution, the President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker. The Constitution limits his functions in the lawmaking process to the recommending of laws he thinks wise and the vetoing of laws he thinks bad. And the Constitution is neither silent nor equivocal about who shall make the laws which the President is to execute.

Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 587 (1952). While the President should discharge his limited legislative powers with all seriousness, the Framers' "[e]xplicit and unambiguous provisions," *Chadha*, 462 U.S. at 945, compel the conclusion that Congress is to be the locus of legislative authority.

B. THE CANCELLATION AUTHORITY CONFERRED UPON THE PRESIDENT BY THE LINE ITEM VETO ACT CONSTITUTES A UNILATERAL POWER OF REPEAL

The Act violates the Presentment Clause by shifting the locus of legislative authority from Congress to the President through its conferral of cancellation authority on the executive branch. 222 U.S.C. §§ 691(a), 691(e)(2). In essence, the cancellation authority transforms the President's ability to recommend laws into a power to repeal laws—a power the Framers deliberately chose to withhold from the Executive. According to the *Horton* court, "Because the Act governs the implementation of appropriations statutes after they have become law rather than the process by which they are enacted, the Act presents no genuine Presentment Clause issue." *Horton v. Raines*, No. 96-CV-2274, slip op. at 3 (E.D. Dav. June 22, 1997). This analysis fundamentally misapprehends the Act's unconstitutional dimension: It is precisely because the Act governs

implementation of legally binding enactments that it is unconstitutional.

Under the Act, the President possesses the power to "cancel" "any dollar amount of discretionary budget authority" or "any item of new direct spending." 222 U.S.C. §§ 691(a)(1)-(2). This discretionary power only extends to a "bill or joint resolution that has been signed into law pursuant to Article I, section 7, of the Constitution of the United States." 222 U.S.C. § 691(a). Therefore, any appropriations selected by the President for cancellation are legally binding obligations created by the combined mechanism of bicameral passage and presidential signature. Under the Presentment Clause, "[i]t necessarily results that a bill when so signed becomes from that moment a law." *La Abra Silver Mining Co. v. United States*, 175 U.S. 423, 454 (1899); *see also United States v. Will*, 449 U.S. 200, 225 (1980) ("The statute became law only upon the President's signing it . . . .").

Since the provisions subject to cancellation comprise valid legal obligations, when the President exercises the cancellation power he in effect repeals law. An examination of the Act's statutory definitions for "cancellation" confirm this conclusion. Under the Act, "cancellation" means either "to rescind," "to prevent . . . budget authority from having legal force or effect," or "to prevent the specific legal obligation of the United States from having legal force or effect." 222 U.S.C. § 691(e)(2). The power to quash a legal duty presupposes the existence and legality of that duty. If the canceled appropriations represent obligations whose legality stems from the President's signature, then logic dictates the conclusion that transmission of the special message required by the statute, 222 U.S.C. § 691(a)(B), represents repeal of those provisions.

By rescinding budgetary authority conferred by Congress, the President alters the legal effect of legislation enacted by Congress. Such action lies outside the scope of execution of the

laws: "The repeal of laws is as much a legislative function as their enactment." *District of Columbia v. John R. Thompson Co.*, 346 U.S. 100, 114 (1953). Since repeal via cancellation constitutes legislative action, it must itself follow the procedure outlined in Article I. *Chadha*, 462 U.S. at 954. However, in contrast to the parallel provision under the ICA, 2 U.S.C. § 683 (1994), Congress does not have to enact the President's cancellation; it takes effect the moment he notifies Congress of his decision. 222 U.S.C. § 691(a)(B). The net result of the statutory regime erected by the Act is the circumvention of Article I's "exhaustively considered procedure": the President unilaterally nullifies a duly enacted law without passage by both houses of Congress or presentment.

C. EXECUTION OF A POWER PURSUANT TO AN UNCONSTITUTIONAL DELEGATION IS ITSELF UNCONSTITUTIONAL.

In its decision, the *Horton* court rejected this contention, characterizing cancellation as a purely executive act. *Horton*, slip op. at 3. In its view, when the President utilizes the cancellation power authorized by Congress, he fulfills his duty of executing the laws—a duty which extends to the Line Item Veto itself as well as the underlying appropriations bill. The Supreme Court has opined that "[i]nterpreting a law enacted by Congress to implement the legislative mandate is the very essence of 'execution' of the law." *Bowsher v. Synar*, 478 U.S. 714, 733 (1986). In its analysis, however, the *Horton* court has conflated presidential action under the Act with the effect such action has upon the underlying appropriations bill. Insofar as the President adheres to the criteria enumerated in the Act for identifying cancellations, makes the appropriate findings, and transmits the prescribed message, 222 U.S.C. § 691, he performs an executive function. However, respondent objects not to the manner in which the President

exercised the conferred authority, but to the fact that the President possesses the power at all.

Chadha instructs courts to draw the very distinction between form and substance that the *Horton* court overlooked. "Whether actions taken . . . are, in law and fact, an exercise of legislative power *depends not on their form* but upon 'whether they contain matter which is properly to be regarded as legislative in its *character and effect*.'" *Chadha*, 462 U.S. at 952 (quoting S. Rep. No. 54-1335, at 8 (1897)) (emphasis supplied). As a guideline in assessing an action's "character and effect," the Court described legislative action as that which "had the purpose and effect of altering the legal rights, duties and relations of persons . . . all outside the legislative branch." *Id.* Under these definitional standards, the Act's cancellation provisions are unquestionably legislative in nature. In rescinding valid legal obligations, cancellation alters legal duties and rights of persons outside of government. Before exercising the cancellation power, the government had a legal duty to expend funds for specified items of new spending, and the individuals and organizations to whom the money was to be directed stood in a special relation to the government. After the President transmits the necessary message, the government no longer has a duty, and the objects of the canceled appropriation no longer have expectations of funding.

A comparison of the cancellation process with the process required for Congress to realize the same effect highlights the legislative character of the power conferred by the Act. If Congress wished to rescind budget authority it had enacted through legislation, it could not merely instruct the President to withhold the funds or ignore the targeted provision. Instead, both houses would have to pass further legislation and obtain presidential approval (or acquiescence). Congress cannot delegate to the President a power it does not itself possess.

The *Horton* court gleans from *Chadha* a different proposition. According to the district

court, the fact that the President's cancellation authority "might resemble 'legislative' action in some respects," does not dictate the conclusion that the power is an unconstitutional exercise of legislative authority as long as he wields it in the manner prescribed by Congress. *Horton*, slip op. at 3-4 (quoting *Chadha*, 462 U.S. at 953 n.16). In other words, because Congress has delegated legislative authority, execution of the authority within prescribed bounds insulates the President's actions from constitutional attack. However, an unconstitutional power delegated in limited circumstances and utilized sparingly and conscientiously still violates the Constitution. Nor is the Congress's ability to insulate certain spending provisions from the cancellation power dispositive as to the power's constitutionality. Drafting provisions enabling the legislative branch to evade application of an illegal power curtails the power's scope; it does not cure its intrinsic constitutional infirmity. The *Chadha* court effectively dismissed the *Horton* court's argument when it declared that "[t]he explicit prescription for legislative action contained in Art I. cannot be amended by legislation." *Chadha*, 462 U.S. at 958 n.22. The Constitution forbids the executive branch from possessing authority legislative in "character and effect"; the President cannot transform the illegal nature of the power by exercising his "core Article II function of faithfully executing the laws." *Horton*, slip op. at 3. If Congress cannot amend the legislative process directly, it cannot delegate the ability to the President who may accomplish the same effect indirectly.

D. THE CANCELLATION PROCEDURE UNDER THE LINE ITEM VETO ACT DEVIATES MATERIALLY FROM RECISSION UNDER THE IMPOUNDMENT CONTROL ACT.

Finally, the *Horton* court affirmed the Act's constitutionality on the ground that it "is consistent with the historical understanding of Congress's power to confer spending discretion on

the Executive Branch." *Horton*, slip op. at 4, 5. First, the continuity of an unconstitutional practice does not endow it with a presumption of validity or minimize the degree of scrutiny with which the Court should examine it. "Even assuming the existence of this tradition of 'executive common law,' no weight can be accorded to it. Long continuation of decisional law or administrative practice incompatible with the requirements of the Constitution cannot overcome our responsibility to enforce those requirements." *Puerto Rico v. Branstad*, 483 U.S. 219, 228-29 (1987). *Chadha* exemplifies action by the Court in which it upheld the integrity of Article I's clear mandates over the acknowledged utility of a historically sanctioned device of questionable legality. Despite the fact that "295 congressional veto-type procedures ha[d] been inserted in 196 different statutes" at the time the Court considered *Chadha*, the Court struck down the provisions despite their pervasiveness. *Chadha*, 462 U.S. at 944 (quoting Abourezk, *The Congressional Veto: A Contemporary Response to Executive Encroachment on Legislative Prerogatives*, 52 Ind. L. Rev. 323, 324 (1977)). Frequent recourse to a practice destructive of the separation of powers does not ameliorate its destructive effect—it compounds it. The President cannot rectify a mistake by repeating it.

Furthermore, the scope of the cancellation power under the Act differs fundamentally from its parallel provision in the ICA. Under the ICA, when the President wishes to permanently rescind budget authority, he must advise Congress of his determination and the reasons therefor. 2 U.S.C. § 683(a) (1994). In order for the President's wish to become law, Congress must pass a "recission bill" enacting the Executive's proposal within 45 days under normal Article I procedures. 2 U.S.C. § 683(b) (1994). This procedure implements Article II's limitation on presidential legislative influence to "recommend[ing] . . . such Measures as shall judge necessary

and expedient," U.S. Const. art II, § 3, while ensuring the legality of any subsequent recission by subjecting it to Article I's bicameralism and presentment mechanisms.

In contrast, under the Act, the President's decision becomes law absent congressional action. 222 U.S.C. § 691(a). Unlike the President, whose acquiescence the Constitution permits Congress to view as assent, U.S. Const. art I., § 7, cl. 2, Congress must act affirmatively in passing and presenting legislation before it may have binding effect. While "[t]he fact that it may grant more discretion to the President than the original ICA does not render the Act unconstitutional," *Horton*, slip op. at 5, the fact that the Act empowers the President to nullify non-discretionary spending does. Discretion to propose recission differs fundamentally from discretion to unilaterally effect recission. The Act converts the President's special message from a recommendation into a decree.

II. THE LINE ITEM VETO VIOLATES THE NON-DELEGATION DOCTRINE BY CONFERRING BASIC LEGISLATIVE AUTHORITY UPON THE EXECUTIVE.

A. SATISFACTION OF THE INTELLIGIBLE PRINCIPLE TEST DOES NOT CHANGE THE LEGISLATIVE CHARACTER OF THE CANCELLATION POWER.

As a corollary to the separation of powers doctrine, the Court has held that a branch of government may not abdicate its constitutionally prescribed functions by effectively transferring its duties to another branch. "That congress cannot delegate legislative power to the president is a principle universally recognized as vital to the integrity and maintenance of the system of government ordained by the constitution." *Field v. Clark*, 143 U.S. 649, 692 (1892). At the same time, the Framers "saw that a hermetic sealing off of the three branches of Government from

one another would preclude the establishment of a Nation capable of governing itself effectively." *Buckley v. Valeo*, 424 U.S. 1, 121 (1976). In order to realize the Framer's designs of a workable government, the Court has repeatedly approved legislation that enlists executive assistance in implementing broad policy directives so long as the legislation contains "an intelligible principle" by which the coordinate branch may guide its actions. *J.W. Hampton, Jr., & Co. v. United States*, 276 U.S. 394, 409 (1928); *see also Touby v. United States*, 500 U.S. 160 (1991) (upholding congressional delegation of authority to Attorney General to schedule controlled substances on a temporary basis); *Mistretta v. United States*, 488 U.S. 361 (1989) (approving delegation of authority to formulate federal sentencing guidelines to Federal Sentencing Commission).

Although in application the "intelligible principle" test has not proved especially onerous, "it remains a basic principle of our constitutional scheme that one branch of the Government may not intrude upon the central prerogatives of another." *Loving v. United States*, 116 S. Ct. 1737, 1743 (1996). Ultimately, a court must measure a delegation against the standards codified in the Constitution: "In designing that structure, the Framers themselves considered how much commingling was, in the generality of things, acceptable, and set forth their conclusions in the document." *Mistretta*, 488 U.S. at 426 (Scalia, J., dissenting). The cancellation power conferred upon the President by the Act transgresses those limits. By allowing the executive branch to alter duly created legal obligations, the Act delegates "more than the authority to make policies that implement . . . statutes." *Loving*, 116 S. Ct. at 1750 (citing *Field*, 143 U.S. at 693-94). When the President cancels an item of new spending, he implements the Act but he also legislates vis-a-vis the underlying appropriation. Assuming *arguendo* the Act satisfies the "intelligible principle" test as the *Horton* court maintains, *Horton*, slip op. at 7-8, such fact does not address the Act's

inherent flaw. A carefully circumscribed delegation of legislative authority remains an unconstitutional act despite such statutory restrictions.

Since appropriations legislation lays the foundation for all other governmental activity, it represents the one area of substantive legislation in which Congress attempts—indeed must—specify its priorities with meticulousness. Each item of spending embodies a legislative judgment about the importance of the given provision; cancellation overrides that judgment and substitutes another not subject to Article I procedures. While Congress may delegate to the executive branch discretion in implementing the legislative will, it cannot bestow the power to alter or redefine its will—the Constitution does not permit it. The fact that Congress itself has delegated legislative power as opposed to the President usurping it does not factor into the constitutional calculus: "The Constitution's division of power among the three branches is violated where one branch invades the territory of another, whether or not the encroached-upon branch approves the encroachment." *New York v. United States*, 505 U.S. 144, 182 (1992). Just as "[t]he constitutional authority of Congress cannot be expanded by the 'consent' of the domain thereby narrowed," the President may not exercise unconstitutional authority despite the explicit approval of Congress. *Id.*

B. THE LINE ITEM VETO ACT FAILS TO FULFILL THE PURPOSES UNDERLYING EXCEPTIONS TO THE NON-DELEGATION DOCTRINE, THEREBY CONFIRMING IS UNCONSTITUTIONALITY.

An examination of the purposes underlying judicial exceptions to the non-delegation doctrine emphasizes the essentially legislative nature of the cancellation power created by the Act. Supreme Court approvals of inter-branch cooperation have been predicated upon "a practical understanding that in our increasingly complex society, replete with ever changing and more

technical problems, Congress simply cannot do its job absent an ability to delegate power under *broad general directives*." *Mistretta*, 488 U.S. at 372 (emphasis supplied). The decisions often express a concern with ensuring that Congress retain sufficient flexibility to adapt legislative mandates to unforeseen contingencies and a desire to liberate lawmakers from the morass of administrative detail that could stultify the legislative process. *See J.W. Hampton*, 276 U.S. at 407; *Loving*, 116 S. Ct. at 1744. The Act, however, serves neither of these purposes in relation to the appropriations bills it affects.

First, cancellation does not inure any flexibility for dealing with future conditions to Congress since the President must exercise his authority within five days of the underlying appropriation's enactment. It strains the imagination to conceive of a scenario in which such a limited five-day window of opportunity would make an appreciable difference in budgetary policy. Second, cancellation power does not in any way alleviate the burden upon Congress to draft appropriations bills with specificity. In fact, the cancellation power presupposes the existence of specific items upon which the President may act. The line item veto may afford the President an efficient mechanism by which to excise unneeded or wasteful legislation, but the non-delegation inquiry focuses upon the needs of Congress, not of the agent to whom it delegates. In many policy areas Congress lacks the expertise or resources to design intricate solutions to complex problems. In such cases, Congress depends upon the specialized knowledge of the executive agencies in effecting the legislative will. Appropriations bills, however, do not fall under the rubric of "broad general directives"; where money is concerned, Congress employs a heightened attention to detail and enjoins the executive to spend accordingly.

The points raised are not done so in order to indict the efficacy of the line item veto as an

efficient mechanism in the nation's perpetual budgetary problems. Constitutional flaws aside, cancellation power may represent a needed, desirable innovation; however, the Court cannot overlook the Act's fundamental deficiencies. "'[S]eparation of powers' was obviously not instituted with the idea that it would promote governmental efficiency. It was on the contrary, looked to as a bulwark against tyranny." *United States v. Brown*, 381 U.S. 437, 443 (1965). Indeed, "policy arguments supporting even useful 'political inventions' are subject to the demands of the Constitution which defines powers and, with respect to this subject, sets out just how these powers are to be exercised." *Chadha*, 462 U.S. at 945. If the Congress wishes to invest the President with virtually unfettered discretion in spending, it may draft appropriations bills in broad terms and leave the executive to direct the funds as he sees fit within stipulated parameters. But if Congress wishes to invest the President with virtually unfettered discretion in rescinding binding, mandatory obligations, it must conform with the amendment procedure outlined in Article V.

CONCLUSION

For the reasons set forth above, Respondent respectfully requests this Court to affirm the ruling of the District Court for the Western District of Davis and declare that the Line Item Veto Act is unconstitutional.

Respectfully submitted,

Counsel for Petitioner

[redacted]