

Testimony of  
**Honorable Jerry Lewis**  
Before the  
**House Committee on Rules**  
**March 15, 2006**

## **LINE ITEM VETO – LESSONS LEARNED**

During 1997, President Clinton exercised his authority under the original Line Item Veto Act of 1996 to cancel spending authority or tax benefits 82 times. Total cancellations of discretionary budget authority amounted to \$479 million, or *less than three one-hundredths of one percent* of the total fiscal year 1998 Federal budget.

The cancellations made during this period were mired in controversy. On October 6, 1997, President Clinton cancelled \$287 million for 38 military construction projects in 24 states. Soon after the cancellations were announced, the Administration admitted, in response to bipartisan criticism, that they

had used flawed information in deciding to cancel nearly half of the projects.

The Administration used three criteria in making these decisions. The cancelled projects: 1) were not requested by the military; 2) could not make contributions to the national defense in FY 1998; and 3) would not benefit the quality of life and well-being of military personnel. These criteria were applied by the White House and OMB without consulting either the Department of Defense or the Members of Congress who sponsored the projects.

Congress' motivation for funding many of these projects was safety. A Live Fire Command and Control Facility at Fort Irwin, CA, would enable the Army to safely train personnel in the live firing of ordnance. Renovations at White Sands Missile

Range, N.M., would address the absence of fire suppression systems.

Other projects provided much-needed housing. One would provide housing at Dyess AFB in Texas, where there were no existing facilities to house the 13<sup>th</sup> Bomb Squadron.

Press reports gave specific attention to a cancelled Army Reserve project in Utah. The cancellation unintentionally impinged on plans to develop the Olympic Village for the 2002 Salt Lake City Winter Olympic games. The project would have enabled the transfer of Army Reserve units to a location closer to Salt Lake City; the transfer would clear the way to develop the units' old location for the Olympic Village. The Administration admitted that it had been unaware of the relationship between the project and Olympic planning. Chairman Bob

Livingston singled out the cancellation in a letter to President Clinton that was critical of the Administration's decision-making: "I can only conclude that your decision was based on something other than an altruistic yearning to cut spending. Mr. President, this was an embarrassing mistake in Utah."

The Clinton Administration responded to some of the criticism by stating that many of the cancelled projects would be requested in future budgets anyway. This only fueled congressional objections, however, as Members could not understand why the projects were not necessary now when they could be considered necessary in the next budget cycle.

Congress responded by passing a bill to disapprove the President's military construction cancellations. The bill was vetoed by the President. The House voted 347-69 and the Senate voted 78-20

to override the veto, enacting the bill and nullifying the cancellations.

On June 25, 1998, the Supreme Court ruled that the Line Item Veto Act violated the presentment clause of the Constitution. Three weeks later, OMB announced that all previously cancelled funds were available for obligation.

### President Bush's Proposal

The experience of the original Line Item Veto Act should cause Congress to be extremely cautious about giving the President new line item veto authority. Even though the implementation of budget authority cancellation differs from the original Act (under President Bush's proposal there would be expedited rescission authority), the authority would

transfer a great deal of budgetary power to the Executive Branch.

Expedited rescission authority would give new weight to the President's rescission proposals. While under current law any rescission proposal can be disregarded by Congress if it has no merit, the President's expedited rescission plan *requires* votes in the House and Senate. The President would set the agenda by deciding what rescissions to include in a bill, and he could structure his rescission messages with more of an eye toward politics instead of policy.

For example, a President could propose rescissions that target the projects of one political party. Under this scenario, the debate over the bill would be blatantly political and would certainly lead to legislative stonewalling by the offended party.

The President could also dictate how many rescission bills Congress would be required to debate. If the President wished to propose 100 rescissions, he could send up one rescission message (resulting in one bill) or up to 100 rescission messages (resulting in 100 separate bills). A President would be able to structure his rescission messages in order to leverage certain political outcomes, such as including projects sponsored by political adversaries along with unpopular projects in one message (thereby increasing the likelihood of the rescissions being enacted), while including other projects with broader congressional support in another message.

Each rescission message, and thus each separate bill, would use up to four hours of debate time in the House and ten hours in the Senate. A multiple-rescission-bill scenario could easily eat up precious

legislative time when the legislative calendar is already severely limited.

A Republican Congress might tend to support a Republican President's rescission proposals. However, there may not always be a Republican President in the White House. Expedited rescission authority would provide new opportunities for conflict between a White House and Congress of differing parties. The result could be a legislative deadlock manufactured by the Executive Branch.

The experience of the Line Item Veto Act under President Clinton showed how contentious the debate could become over saving a relatively small amount of money. Congress should have serious reservations over giving the Executive Branch so much sway over the funding of congressional priorities and the framework of the legislative agenda.