

WILLIAM J. CLINTON, President OF THE UNITED STATES, ET AL. v. CITY OF
NE W YORK, ET AL No. 97-1374

Argued April 27, 1998

Decided June 25, 1998

Congressional Republicans had made the line item veto a part of their "Contract with America" platform that helped them win the control of Congress in 1994. They argued that the line item veto was necessary in order to control "pork-barrel" spending. Interestingly, this was the only part of the "Contract with America" which President Clinton supported. The Line Item Veto Act became effective January 1, 1997.

The Act authorized the president to cancel specific items contained in spending and tax bills approved by Congress. According to the Act, the president could cancel a specific dollar amount in appropriation acts, an item of new direct spending, or a limited tax benefit that affected a small number of taxpayers. The president had to determine that a cancellation would reduce the federal budget deficit, would not impair any essential government function, and would not harm the national interest. The Act also instructed the president to take into account the legislative history and purpose, and any other available relevant information about the spending or tax law in which the cancellation is made.

Under the Act, the president was required to submit a special cancellation message to Congress within five days after enactment of the bill, stating particular reasons for the cancellation. The cancellation would take effect immediately. The Act provided for expedited consideration by Congress of a disapproved bill that, if enacted, reinstated the canceled item. Disapproved bills would be subject to being vetoed in their entirety.

Six members of the 104th Congress who had voted against the Act filed a lawsuit the day after it was passed, contesting its constitutionality. Their suit was begun before any presidential cancellations had taken place. After the U.S. District Court held the Act unconstitutional, the Executive Branch appealed directly to the U.S. Supreme Court (as provided under the Act). The Court, in *Raines v. Byrd* (1997), did not address the constitutionality of the law. Writing for the majority, Chief Justice Rehnquist wrote that the members of Congress did not have standing to maintain a constitutional challenge of the law because they had not alleged sufficiently concrete injury.

Within two months after the Supreme Court announced its decision in *Raines v. Byrd*, President Clinton exercised his authority under the Act by canceling a part of the Balanced Budget Act of

1997. The president notified Congress that canceling this item would "reduce the Federal budget deficit." The canceled portion of the Act rescinded the federal government's right to recoup as much as \$2.6 billion in taxes that the State of New York had levied against Medicaid providers. New York City, two hospital associations, a hospital and two unions of health care employees challenged this cancellation by suing the president. Soon thereafter, Clinton also canceled a section of the Taxpayer Relief Act of 1997 that would have allowed stock owners of an agricultural processor to defer capital gains taxes on to an agricultural cooperative. This cancellation by the president was challenged by an Idaho cooperative of approximately thirty potato growers (known as Snake River), who sued the Secretary of the Treasury.

The United States District Court for the District of Columbia consolidated the two cases, ruling that both plaintiff groups had standing to contest the Act. The District Court also held that the Act violated Article 1, Section 7 of the Constitution and "disrupts the balance of powers among the three branches of government." The Executive Branch again appealed directly to the United States Supreme Court.

ISSUES: Under Article III of the U.S. Constitution, do the challengers of the Line Veto Act have standing to challenge the law? Does the Line Item Veto Act violate provisions of Article I of the U.S. Constitution on the principle of separation of powers?

CLINTON v. NEW YORK
(1998) Decision

In a six-to-three decision, the Court said the line item veto violates the so-called "presentment clause" of the Constitution (the House and Senate agree on bills to be presented to the president; he signs or vetoes the bills in to law). The majority opinion was written by Justice Stevens, who was joined by Chief Justice Rehnquist and Justices Kennedy, Souter, Thomas, and Ginsburg., Stevens first compared these two cases to *Raines v. Byrd*. He wrote:

... these cases differ from Raines, not only because the President's exercise of his cancellation authority has removed any concern about the ripeness of the dispute, but more importantly because the parties have alleged a "personal stake" in having an actual injury redressed rather than an "institutional injury" that is "abstract and widely dispersed. "

Justice Stevens answered the first issue, concerning standing to sue, early in his remarks. He wrote:

The District Court correctly concluded that the State, and the appellees, "suffered an immediate, concrete injury the moment that the President used the Line Item Veto to cancel ... and deprived them of the benefits of that law. "... His action was comparable to the judgment of an appellate court setting aside a for the defendant and remanding for a netiv trial of a multibillion dollar damages claim. Even if the outcome of the second trial is speculative, the reversal, like the President's cancellation, causes a significant immediate injury by depriving the depriving of the benefit of a favorable final judgment.

After determining that there was standing in the case, the majority justices moved to the second issue. Stevens continued:

In both legal and practical effect, the President has amended two Acts of Congress by repealing a portion of each....There is no provision in the Constitution that authorizes the President to enact, to amend, or to repeal statutes.... Moreover, after a bill has passed both houses of Congress, but "before it become [s] a Law, " it must be presented to the President. If he approves it, "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. "

There are important differences between the President's "return " of a bill ... and the exercise of the President's cancellation authority pursuant to the Line Item Veto Act. The constitutional return takes place before the bill becomes law the statutory cancellation occurs after the bill becomes law. The constitutional return is of the entire bill; the statutory cancellation is of only apart.... The cancellation of one section of a statute may be the functional equivalent of a partial repeal even if a portion of the section is not canceled.

The majority opinion then discussed the petitioner's argument that Congress could voluntarily give the president additional rights not mentioned in the Constitution. To this, Stevens concluded:

If there is to be a new procedure in which the President will play a different role in determining the final text of what may "become a law " such change must come not by legislation but through the amendment procedures set forth in Article V of the Constitution.

Justice Kennedy voted with the majority but added a concurring opinion in order to respond to Justice Breyer's dissent. Justice Breyer had argued that the Act did not threaten the liberties of individual citizens, and Breyer wrote in response:

... To say the political branches have a somewhat free hand to reallocate their own authority would seem to require acceptance of two premises: first, that the public good demands it, and second, that liberty is not at risk. The former premise is inadmissible. The Constitution's structure requires a stability which transcends the convenience of the moment.... The latter premise, too, is flawed. Liberty is always at stake When one or more of the branches seek to transgress the separation of powers.

Kennedy concluded, "By increasing the power of the President beyond what the Framers envisioned, the statute compromises the political liberty of our citizens, liberty which the separation of powers seeks to secure."

Justice Breyer, who was joined in his dissent with Justices O'Connor and Scalia, wrote:

.. [W]hen one measures the literal words of the Act against the Constitution's literal commands, the fact that the Act more closely resembles a different, literally unconstitutional arrangement is beside the point. To drive exactly 65 miles per hour on an interstate highway closely resembles an act that violates the speed limit. But it does not violate that limit, for small differences matter. When the question is one of literal violation of law. No more does this Act literally violate the Constitution's words.

Breyer ended his remarks with:

In sum, I recognize that the Act before us is novel. In a sense, it skirts a constitutional edge. But that edge has to do with means, not ends. The means chosen do not amount literally to the enactment, repeal, or amendment of a law. Nor, for that matter, do they, amount literally to the "line item veto" that the Act's title announces. , Those means do not violate any basic Separation of Powers principle. They do not improperly shift the constitutionally foreseen balance of power from Congress to the President. Nor since they comply with Separation of Powers principles, do they threaten the liberties of individual citizens. They represent an experiment that may, or may not, help representative government work better. The Constitution, in my view, authorizes Congress and the President to try novel methods in this way....

Justice Scalia concurred in part and dissented in part. He was joined by Justices O'Connor and Breyer and took the unusual step of reading his dissent from the bench. Scalia wrote:

...[T]here is not a dime's worth of difference between Congress's authorizing the President to cancel a spending item, and Congress's authorizing money to be spent on a particular item at the President's discretion. And the latter has been done since the Founding of the Nation....

The short of the matter is this: Had the Line Item Veto Act authorized the President to "decline to spend" any item of spending contained in the Balanced Budget Act of 1997, there is not the slightest doubt that authorization would have been constitutional. What the Line Item Veto Act does instead--authorizing the President to "cancel " an item of spending--is technically different. But the technical difference does not relate to the technicalities of the Presentment Clause, which have been fully complied with; and the doctrine of unconstitutional delegation, which is at issue here, is preeminently not a doctrine of technicalities. The title of the Line Item Veto Act, which was perhaps designed to simplify for public comprehension, or perhaps merely to comply with the terms of a campaign pledge, has succeeded in faking out the Supreme Court....