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The Power of History to Stir a Man's Blood: Senator Robert C. Byrd in the Line Item Veto Debate

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THE POWER OF HISTORY TO STIR A MAN'S BLOOD: SENATOR ROBERT C. BYRD IN THE LINE ITEM VETO DEBATE

M. Blane Michael*

"One should be acquainted with the history of the events of past ages. To be ignorant of what occurred before you were born is to remain always a child. For what is the worth of human life, unless it is woven into the life of our ancestors by the records of history?"2

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I. INTRODUCTION

The line item veto debate highlighted two of Senator Robert C. Byrd's great passions, both of which have been stoked by his belief that self-education must be a lifelong commitment. First, Senator Byrd has a passion for history. He has devoted countless hours and days to readings about American and European civilization, with the hope that if one "studies history as it bridges the centuries of time, [one] then becomes the recipient, the beneficiary of the wisdom of hundreds of lifetimes stretching back into the dim mists of antiquity."3 Second, Senator Byrd has a passion for the Constitution. He genuinely cherishes the document as a foundation for our political structure. Indeed, he is widely

* Circuit Judge, U.S. Court of Appeals for the Fourth Circuit. I thank three of my law clerks, John K. Chapman (2004-05), Alex Kreit (2004-05), and Indraneel Sur (2005-06), for their help in preparing this article.


known for always carrying a copy of it in his left breast pocket. Remarkably, Senator Byrd developed his loves for history and for the Constitution more through his own force of will and pure intellectual curiosity than through the prodding of teachers.

The twin passions have jointly influenced the Senator's perspective on the power of Congress in relation to the other two branches of government. From his study of the Greek and Roman classics, as well as English history, Senator Byrd has drawn strength for his belief in legislative authority. He stood for this belief in his fierce struggle against the Line Item Veto Act, where he sought to protect Congress's power and, by extension, the delicate equilibrium of checks and balances established by the Constitution. As Senator Byrd has recognized, his commitment to preserving legislative authority against threats such as the line item veto legislation derives from his "reverence for the legislative branch under the Constitution, a reverence for the separation of powers and checks and balances, . . . [and] a reverence for history."5

While most proponents focused on the Line Item Veto Act's projected short-term benefits for fiscal discipline, Senator Byrd brought a unique historical perspective to the debate. Among his most ardent criticisms of the Act were those he made in a series of fourteen speeches, delivered on the Senate floor from May to October 1993 (and published in a single volume, The Senate of the Roman Republic, in 1995). He devoted the speeches to the history of the Roman Senate, a subject he chose because it had greatly influenced the philosophy and political theory of the French philosopher Montesquieu. The Framers adopted Montesquieu's theory that political power should be separated into three branches designed to check and balance each other. As Senator Byrd put it, "[I]f one is to better understand the principles and theory of our own Constitution, one should be familiar with Montesquieu's political thought and, following in Montesquieu's tracks, also study Roman history."6

Senator Byrd's opposition to the line item veto did not dissipate as momentum built in favor of the measure. His criticism continued in the Senate chamber until the Line Item Veto Act was passed and in the federal courts when the legislative process concluded. In this Article, I first look to Senator Byrd's lectures on the Roman Senate to understand his view of legislative authority, particularly its power to tax and spend. I then turn to the line item veto controversy as a classic example of how Senator Byrd's twin passions for history and for the Constitution have together shaped his view of legislative power.

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4 See 142 CONG. REC. S2929, 2937 (daily ed. Mar. 27, 1996) (statement of Sen. Byrd) ("My contract with America is the Constitution of the United States. I paid 15 cents for this copy several years ago. It cost[s] $1, I think, now. There it is, well-worn, taped together, and pretty well marked up. But that is my contract with America.").
5 BYRD, REPUBLIC, supra note 2, at 11.
6 Id. at 7.
II. SENATOR BYRD'S DEVOTION TO THE LEGISLATURE

A. Preserving Legislative Authority

According to Senator Byrd,

the primary purpose of the legislative branch is to be found in its unique capacity to publicly, in the light of day, and under the hot lights of full media scrutiny, sort through competing interests, deliberate, reconcile, apportion public treasure, and forge laws, compromises, solutions, and priorities which are compatible with our national objectives and with the public good.\(^7\)

Senator Byrd’s extensive study of the classics of Western civilization has reinforced his respect for the legislative branch. He has traced the rise of Rome to the strength of the Roman Senate, and the decline of Rome to the decline in the Roman Senate’s strength and the corresponding establishment of an all-powerful executive, the emperor. After Rome threw off its monarchy in 510 B.C., the Roman Senate became the supreme governmental body. “The making of alliances and treaties, the formulation and execution of foreign policy, the waging of war, the control of the public treasury . . . the power over the purse—all of these were the exclusive functions of the Senate, and they gave it enormous power.”\(^8\)

The Roman Senate in its best days serves as a model for Senator Byrd. The Roman Senators were old men who were “the wisest of the wise,” for whom freedom of speech was absolutely assured.\(^9\) And, although Senator Byrd does not measure our national greatness by the sweep of our military domination of foreign countries, he noted that under the authority of the Roman Senate, Rome fought many foreign wars yet managed to emerge from them both victorious and more prosperous.\(^10\) (As I note later, Senator Byrd has never yielded to the assumption that handing power to the executive branch is a necessary precondition for successfully navigating a time of national challenge.)

History has taught Senator Byrd that the greatest threat to the legislative branch is not an executive branch that snatches more authority (though this is a substantial threat) but rather the complacency and irresponsibility of a legislative branch that willingly cedes its authority. For example, Senator Byrd noted that the Roman Senate’s demise did not stem from Julius Caesar’s grab of power. Rather, “[t]he Roman Senate thrust power on Caesar deliberately with forethought, with surrender, with intent to escape from responsibility. . . . and,


\(^8\) BYRD, REPUBLIC, supra note 2, at 34.

\(^9\) Id. at 5, 34.

\(^10\) Id. at 52.
in doing so, created in Caesar the most powerful man in the ancient world.\textsuperscript{11} Caesar came to power during a time of civil war and fading Roman values. Graft, greed, and corruption were rampant in the Roman government, and the Senate simply "lost its way, its nerve, its vision, and its independence."\textsuperscript{12} Drawing on this historical example, Senator Byrd has condensed his understanding of the relationship between the executive and legislative branch into the following rule: "Neither presidents nor Congress can act by fiat, but must work together, each keeping a firm eye on the other branch, and each jealously guarding its own prerogatives."\textsuperscript{13}

Senator Byrd has also pointed out that the danger of the legislature surrendering its power is greatest in times of peril. This is so because "[i]n difficult times or in crises, many people grow impatient" and look to their leaders for quick fixes to collective problems.\textsuperscript{14} As an example, Senator Byrd noted that after Julius Caesar was assassinated, Caesar's heir Augustus tried to restore power to the Roman Senate, which had previously abdicated much of its authority. The Roman Senate demurred, however, preferring to be a "toady to an imperator, an emperor, a strongman who would take charge of the national destiny."\textsuperscript{15} Senator Byrd observed that "[t]here may have been a phenomenon of man's nature at work here, for, in times of crisis, when the foundations of a society begin to shake and old certainties topple, there seems to be something in man that loves a Caesar[,] . . . a strongman to whom one can turn for national salvation and security."\textsuperscript{16}

Senator Byrd's study of history has led him to conclude that this tendency for legislatures to cede power is unwarranted — even in times of peril. Legislatures can in fact react quickly and effectively when they need to. As an example of decisive legislation action, Senator Byrd cites the Roman Senate's iron resolve during the Second Punic War, fought 218-202 B.C. At the Battle of Cannae the Carthaginian army, led by its general Hannibal, slaughtered up to 70,000 Roman soldiers as well as eighty senators and other high ranking executive officers.\textsuperscript{17} The Battle of Cannae proved such a huge loss that Rome was on the verge of losing the entire war against Carthage.

It was in this dark hour that "[t]he Roman Senate showed its teeth."\textsuperscript{18} The Senate doubled the war tax, recruited both slaves and prisoners into the

\textsuperscript{11} Id. at 163.

\textsuperscript{12} Id. at 128.


\textsuperscript{14} BYRD, REPUBLIC, supra note 2, at 186.

\textsuperscript{15} Id. at 167.

\textsuperscript{16} Id.

\textsuperscript{17} See id. at 80 ("In one afternoon at Cannae, there were more Romans killed than there were soldiers lost by the United States in the entire eight years of the Vietnam war.").

\textsuperscript{18} Id. at 74.
army, and required "that all artisans and craftsmen be conscripted into the manufacture of armaments."\textsuperscript{19} Through patience and luck, the Romans eventually forced Hannibal out of Italy. However, "[i]t was the Roman Senate that demonstrated that superb quality of stability and led the Romans and their allies to ultimate victory."\textsuperscript{20} From this example Senator Byrd distilled the lesson that legislatures can be effective in a crisis and that they should resist "losing [their] nerve and shifting the power of the people, through their elected representatives, to an all powerful executive."\textsuperscript{21}

\textbf{B. The Power of the Purse}

Under our Constitution, "[n]o money shall be drawn from the Treasury but in Consequence of Appropriations made by Law..."\textsuperscript{22} This power to tax and spend may be the greatest of all governmental powers. "This essential tool control of the purse by the people's representatives in Congress lies at the very foundation of our freedoms."\textsuperscript{23} Senator Byrd has emphasized the need to respect this power: "The Constitution provides that the power of the purse shall be vested in the Congress of the United States. We [Senators] swear before God--our Maker, Creator of life eternal--and before man that we will support and defend the Constitution... We ought to be serious about that oath. We ought to remember that the Constitution vests the power of the purse in the legislative branch."\textsuperscript{24}

Senator Byrd's respect for the power of the purse is rooted in the history of Western civilization. In ancient Rome powerful executive elements were constrained by the Roman Senate's \textit{absolute} control over financial matters.\textsuperscript{25} For example, legislative control over the purse prevented the military from becoming too dominant because "[a] soldier could not receive his pay nor a victorious general his triumph unless money for the purpose had been provided by the Senate."\textsuperscript{26} Ultimately, "when the Roman Senate gave away its control of the purse strings it gave away its power to check the executive."\textsuperscript{27}

Senator Byrd has recognized that for the Framers of our Constitution, English history was an even more immediate teacher of the importance of control over the treasury. The English Parliament established its supremacy over

\begin{enumerate}
\item \textit{Id.}
\item \textit{Id. at 80.}
\item \textit{Id. at 81.}
\item U.S. \textsc{Const.} art. I, § 9, cl. 7.
\item Byrd, \textit{Peril}, supra note 6, at 397.
\item \textsc{Byrd, Republic}, \textit{supra} note 2, at 59.
\item \textit{Id. at 180-82; see id. at 96 ("No moneys could be earmarked for war, no moneys could be earmarked for public works except by the Senate.").}
\item \textit{Id. at 96.}
\item \textit{Id. at 187.}
\end{enumerate}
the kings of England by using its power of the purse. “[S]ince time immemorial Anglo-Saxon kings and the early English kings . . . levied taxes on their subjects with the advice and consent” of a body of nobles. 28 Beginning in the 14th century, Parliament began to place conditions on money grants to the king. Over the next several centuries “the power of the purse gradually bec[ame] honed, sharpened, refined, and utilized as a effective tool, not only for resisting unreasonable demands of the King, but also for effectively promoting specific policy objectives which were important to Parliament.” 29 Thus English history, like Roman history, demonstrates that vesting the power of the purse in the legislature is “the absolute bedrock of the people’s continued freedom from tyranny and excesses of all types of authority.” 30

Since the founding of this nation, Congress’s power over the purse has served not only as a check on the executive but also as a means of advancing Congress’s will with respect to national policy. 31 Congress, Senator Byrd believes, is the best institution for making spending decisions because it is “the most representative and open political institution.” 32 Congress is structured to take into account all of the competing interests that influence fiscal policy, and then come to a resolution through debate and compromise. This process “allows Congress as a whole to consider the welfare of all sectors of the country.” 33

III. SENATOR BYRD AND THE LINE ITEM VETO ACT

A. The Debate on Capitol Hill

Congress passed the Line Item Veto Act 34 in 1996 on the theory that it would help decrease wasteful discretionary spending. 35 The Senate approved the measure by a vote of sixty-nine to twenty-nine. Senator Byrd described the vote as “a self-mutilation of [the Senate’s] own power over the purse, driven by popular misconception, a lack of understanding about the importance and the history of control of the purse strings, and an amazing disregard for the Constitution.” 36

28 Byrd, Peril, supra note 6, at 396.
29 Id. at 397.
30 Id. at 396.
32 Id. at 312.
33 Id. at 317.
36 Byrd, Peril, supra note 6, at 399.
The Act, in effect, allowed the President to veto individual items of a spending bill by giving him the authority to “cancel in whole (1) any dollar amount of discretionary budget authority; (2) any item of new direct spending; or (3) any limited tax benefit” within five days after signing a bill into law.37 In turn, the President was obligated to send Congress notification of any vetoed items, and Congress could then reinstate the canceled items by passing a “disapproval bill” within thirty days.38

The Act was long in the making. Although eleven Presidents since the Civil War had publicly supported a line item veto, it was not until the mid-1980s that the concept came close to becoming law, when President Reagan promoted it, only to be defeated in the Senate by a single vote.39 In 1992 the Senate again considered a line item veto proposal and rejected it by a margin of 54 to 44, largely on the strength of Senator Byrd’s opposition.40 The line item veto proposal gained renewed momentum, however, after the Republicans won majorities in both the House and Senate in the 1994 mid-term elections by campaigning on a “Contract with America” that included the line item veto.41 When the line item veto again became a popular idea, the country was facing “a deteriorating infrastructure, a stagnant economy, high unemployment, triple-digit billion dollar deficits, a $4 trillion debt, and $200 billion annual interest payment on that debt.”42

This economic and fiscal weakness made conditions ripe for the Act’s political popularity because, in Senator Byrd’s view, legislatures have a tendency to cede their authority in difficult times. The line item veto seemed a ready answer to the country’s fiscal crisis as it gave one man — one Caesar in Senator Byrd’s terms — nearly final say on which projects to fund. As Senator Byrd put it, “Why take on the hard questions when there is an attractive option like the massive delegation of powers to other authorities?”43

38 Id. § 691(d).
40 See Helen Dewar, Senate Republicans Renew Drive for Line-Item Veto; Byrd Attacks Proposal with a Recitation of the Power of the Purse Over the Centuries, WASH. POST, Feb. 27, 1992, at A12 (reporting that the line item veto proposal “prompted an extraordinary response from Senate Appropriations Committee Chairman Robert C. Byrd, who has been working for some time on a study of the power of the purse in Anglo-American history and went to the Senate floor with the fruit of his labors, hundreds of pages of it”).
42 BYRD, REPUBLIC, supra note 2, at 1.
43 Byrd, Peril, supra note 6, at 404.
The line item veto’s proponents argued that it would allow the President to strike pet projects from spending bills and thereby reduce the deficit. They claimed that the President was best able to account for the national interest, while members of Congress represented their local interests and, as a result, were given to including wasteful projects for their districts or states.

Senator Byrd disputed the contention that the Act would be an effective way to curtail spending. He argued that “the President is no less a political creature than Congress” because he has an incentive to allocate money to executive agencies and localities important to national elections. Further, the Line Item Veto Act did not give the President anything close to full power over federal spending, since it only allowed the President to cancel discretionary spending items, which account for only one-third of the total federal budget. Arguing that the line item veto was not a real solution to overspending, Senator Byrd stated, “Surely all Senators know by now the major cause of the deficits. It is the growth in tax expenditures and in entitlement spending. That is what has to be cut if we are to have any real chance of balancing the Federal budget.”

The Act distressed Senator Byrd not only because he believed it would be ineffective, but more importantly because he concluded it was unconstitutional. His fundamental concern was the colossal shift in political power that, in his judgment, the Act represented. The power that the President would gain was the natural power that flows from the power of the purse, the power to exact concessions and conditions based on the grant of money. Senator Byrd argued that “with the power to kill individual projects, a president could punish those who voted against him, reward others who voted for him, and virtually dictate policy, as well as promote partisan political interests.” Indeed, even some

44 See 142 CONG. REC. S2929, 2931-32 (daily ed. Mar. 27, 1996) (statement of Sen. McCain) (emphasizing the potential for the President to pare spending by exercising line item veto).

45 See, e.g., id. at 2931 (statement of Sen. McCain) (“[E]very Congressman or Senator wants . . . not only their fair share of the Federal pie for their States, they want more . . . . [A] President with a line-item veto could play an active role in ensuring that valuable taxpayer dollars are spent effectively . . . without pointless pork barrel spending.”); 141 CONG. REC. S4222, 4241 (daily ed. Mar. 21, 1995) (statement of Sen. Feinstein) (“Really, what a line-item veto is all about is deterrence, and that deterrence is aimed at the pork barrel.”).

46 Byrd, Purse, supra note 30, at 317.

47 Byrd, Peril, supra note 6, at 399.


49 See, e.g., 142 CONG. REC. 2929, 2937 (daily ed. Mar. 27, 1996) (statement of Sen. Byrd) (“[T]o alter the constitutional system of checks and balances, by giving the executive--any executive, any President, Democrat or Republican--a share in the taxing or appropriations power through the instrument of an item veto or enhanced rescission would, in my view, be rank heresy.”).

senators who supported the Act agreed with Senator Byrd's assessment that the veto would transfer authority from Capitol Hill to the White House.\textsuperscript{51}

Proponents of the Act argued that history was on their side. From this perspective the Act was simply an extension of the traditional practice of impoundment, whereby the President declines to spend the full amount Congress appropriated in a given budget.\textsuperscript{52} “Despite protests from Congress, Presidents... regularly impounded funds to cancel or curtail programs” of all kinds.\textsuperscript{53} Although this argument had superficial appeal, Senator Byrd rejected it implicitly but emphatically by urging his colleagues to instead take a much longer view of history.

To be sure, Senator Byrd was aware that his historical arguments might not persuade the Senate. In debating a proposed amendment to the Act, he confessed as much. “The fact that our Framers drew upon the experience of the colonists and the States, which in turn had drawn upon the experience of Englishmen for centuries, really means nothing in the waiting ears of most of today's Members of this body,” he said.\textsuperscript{54} With a perceptible note of sadness, he added, “[M]ost of us who serve in this body, we do not pay much attention to history. History is bunk, as Henry Ford was supposed to have said. And I gather that most of my colleagues look at history in about the same fashion.”\textsuperscript{55}

But in the dramatic hours of debate that preceded the Act’s final passage Senator Byrd adhered firmly to his conviction — drawn from the same history the Framers understood — that a legislature must never surrender its power to raise and spend money. First, he alluded briefly to the lessons of Roman history,\textsuperscript{56} which he had explored in his speeches against the earlier incarnations of the line item veto legislation.

\textsuperscript{51} See \textit{142 Cong. Rec.} S2929, 2960 (daily ed. Mar. 27, 1996) (statement of Sen. Gramm) (“[N]o doubt about it—and the distinguished Senator from West Virginia [Senator Byrd] is right—it changes the balance of power between the Congress and the President in one fundamental way: It gives the President enhanced power to say 'no' to spending.”); \textit{id.} at 2978 (statement of Sen. Kyl) (“Make no mistake about it, this bill will shift a great deal of new power to the President.”). In challenging the Act, lawyers for Senator Byrd and his colleagues quoted these remarks to the Supreme Court. Brief for Appellees at 3, Raines v. Byrd, 521 U.S. 811 (1997) (No. 96-1671).

\textsuperscript{52} See \textit{142 Cong. Rec.} 2929, 2931 (daily ed. Mar. 27, 1996) (statement of Sen. McCain) (“[T]he power to line item veto is not new. Every President from Jefferson to Nixon used a similar power.”). For an overview of impoundment, see \textit{S. Rep.} No. 104-10, at 2-5 (1995) (citing Niles Stanton, \textit{History and Practice of Executive Impoundment of Appropriated Funds}, 53 Neb. L. Rev. 1, 1-30 (1974)). Lawyers for the Senate later argued to the Supreme Court that the Line Item Veto Act built on “two centuries of delegation of discretionary control over revenues and appropriations” to the executive by the legislature. Brief of the U.S. Senate as Amicus Curiae Urging Reversal at 12, Clinton v. City of N.Y., 524 U.S. 417 (1998) (No. 97-1374); see \textit{id.} at 12-37 (making the historical argument in support of such delegation).


\textsuperscript{55} \textit{Id.}

Next, he turned to the English struggle over the proper allocation of fiscal authority between king and Parliament. Senator Byrd traced "the right of the people of the realm to tax themselves through their own chosen representatives" to the Confirmation of the Charters in 1297.\textsuperscript{57} At that time, England's King Edward I reached an agreement with Parliament that he would not charge "aids, taxes, nor prises, but by the common consent of the realm."\textsuperscript{58} Of slightly more recent vintage, but barely less time-honored, was the "indisputable principle," entrenched since the 1660s, "that the moneys appropriated by Parliament were to be spent only for the purposes specified by Parliament."\textsuperscript{59}

As usual, his speech wove many disparate episodes into one narrative while also accenting the fine details of history — illustrating his point that legislative appropriations have long been very detailed so as to minimize the executive branch's discretion to evade their prescriptions. He pointed, for example, to a parliamentary grant "to Edward IV in 1472 to cover the expenses of 13,000 archers for one year at a daily wage of sixpence"\textsuperscript{60} as an instance of this deliberate specificity.

Finally, Senator Byrd connected the English history with the understanding of the Framers. He emphasized James Madison's view that the "power over the purse[] may . . . be regarded as the most compleat and effectual weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure."\textsuperscript{61} In Senator Byrd's judgment, the English experience, and that of the Roman Senate centuries before, persuaded the Framers to allocate the power to tax and spend to Congress alone in Article I of the Constitution.\textsuperscript{62}

Senator Byrd found attentive, if not sympathetic, listeners. His attack on the Act was so powerful that in news accounts it nearly eclipsed the result of the vote itself. The New York Times, for example, described the debate as "one of the rare times in the Senate when the day was carried oratorically, both sides agreed, by a Senator from the losing side. . . . After thirty-seven years in the

\textsuperscript{57} Id. at 2936.
\textsuperscript{58} Id. at 2934.
\textsuperscript{59} Id. at 2935.
\textsuperscript{60} Id.
\textsuperscript{61} Id. at 2936-37 (quoting THE FEDERALIST NO. 58 (James Madison)).
\textsuperscript{62} Another illustration of Senator Byrd's objections to the Act, grounded in separation of powers, came after it became law. In a speech at the West Virginia University College of Law on April 15, 1998, Senator Byrd continued his public attack on the Line Item Veto Act. He asked, "Can you imagine Lyndon Baines Johnson with such a weapon? Talking with Johnson always left one feeling like one arm could never be used again. With a line item veto, he would have been formidable, indeed!" Byrd, Peril, supra note 6, at 400.
Senate, Senator Byrd, a seventy-eight-year-old Democrat has lost none of his voice and none of his passion for Congress.\textsuperscript{63}

\textbf{B. The Cases in the Federal Courts}

The Line Item Veto Act went into effect on January 1, 1997, and the next day Senator Byrd led a group of Senators and Congressmen in filing a court challenge to the law.\textsuperscript{64} Consistent with Senator Byrd's speeches in opposition to the bill, the group argued that it unconstitutionally delegated legislative power to the President and contravened the Presentment Clause of the Constitution.\textsuperscript{65} Although the suit was filed before the President ever exercised authority under the Act, Senator Byrd and his colleagues relied on a provision of the Act that allowed "any Member of Congress or any individual adversely affected by [this Act to] bring an action, in the United States District Court for the District of Columbia."\textsuperscript{66} The law also provided for a direct, expedited appeal to the Supreme Court.\textsuperscript{67}

The administration, in addition to contesting the merits, argued that the congressional group lacked standing to sue because none of its members had suffered a legally and judicially cognizable injury. Although the district court rejected the administration's arguments, and invalidated the statute,\textsuperscript{68} the Supreme Court reversed. The Court concluded that "[the] individual members of Congress [did] not have a sufficient 'personal stake' in this dispute and have not alleged a sufficiently concrete injury to have established Article III standing."\textsuperscript{69}

The following term, the Supreme Court took on a new case that consolidated two challenges to the Act. The parties in each challenge had suffered concrete injuries because President Clinton exercised the line item veto power.\textsuperscript{70} In one suit New York City complained that an item the President cancelled would have reduced its costs as a health care provider. In the other suit a group of farmers complained that a cancelled item would have reduced their tax obli-


\textsuperscript{66} \textit{Id.} at 815 (quoting 2 U.S.C. § 692(a)(1)).

\textsuperscript{67} \textit{Id.} at 817 (quoting 2 U.S.C. § 692(b), (c)).


\textsuperscript{69} Raines, 521 U.S. at 830. Although the Supreme Court did not reach the constitutionality of the line item veto in \textit{Raines v. Byrd}, the decision is considered one of the leading cases on legislative standing. \textit{See} David M. Dreisen, \textit{Standing for Nothing: The Paradox of Demanding Concrete Context for Formalist Adjudication}, 89 CORNELL L. REV. 808, 810 n.8 (2004) (citing scholars' treatment of \textit{Raines}).

igation. After concluding that these parties met the requirements for standing, the Supreme Court reached the merits in *Clinton v. City of New York*.

Senator Byrd, along with Senators Daniel Patrick Moynihan and Carl Levin, filed an amicus curiae brief to contend once again that the line item veto undermined the basic balance of the Constitution. The brief concentrated on the history and structure of the Constitution and on the nature of the legislative process. It discussed the importance of compromises among members of Congress in drafting and enacting legislation, and argued that giving the president power to strike single provisions from comprehensive spending measures allowed the executive to alter the terms of legislative bargains. "Under the Line Item Veto Act," the brief stressed, "the compromises within and between each House that make concurrence to legislation possible are subject to unilateral change by the President."

Thus, presidential exercise of the line item veto would create a final product different from what Congress had enacted: a law that had not "attained 'the concurrence' of the people and the States [through Congress] as the Framers had required . . . The result would be an erosion of that spirit of trust, which performance reinforces and creates the stability of our institutions." Like Senator Byrd's earlier speeches criticizing the line item veto, the brief delved into specific historical details to make its point. By explaining, for example, how the House of Commons and Henry V agreed in 1414 to end the practice of "unilateral changes by the king of laws requested" by Commons, the brief underscored Senator Byrd's core insight: "The Framers were students of history."

By a vote of 6-3, the Supreme Court agreed with Senator Byrd's conclusion and struck down the Line-Item Veto Act as unconstitutional. The majority held that the Act violated the Presentment Clause by authorizing partial amendment or repeal of properly enacted statutes. The Court recognized that "[f]amiliar historical materials provide[d] abundant support for the conclusion" that this procedure was constitutionally impermissible. Echoing the arguments made by Senator Byrd on the issue, the Court held that the line item veto upset the delicate balance of power envisioned by the Framers:

If the Line Item Veto Act were valid, it would authorize the President to create a different law--one whose text was not

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72 *Id.* at 15, 18 (citing in part 142 CONG. REC. S2974 (daily ed. Mar. 27, 1996) (statement of Sen. Moynihan)).
73 *Id.* at 8 n.4.
74 *Id.* at 8.
75 *Clinton*, 524 U.S. at 438-42.
76 *Id.* at 439-40.
voted on by either House of Congress or presented to the President for signature. Something that might be known as "Public Law 105-33 as modified by the President" may or may not be desirable, but it is surely not a document that may "become a law" pursuant to the procedures designed by the Framers of Article I, § 7 of the Constitution.77

Upon learning of the Supreme Court's decision, Senator Byrd exclaimed, "The Constitution [has] been saved!"78 Later, he said that the Court had rescued us from ourselves, the Congress, which apparently knew so little about the history of the Constitution, the history of the English people, the history of the American people, and the history of the Romans, that the Congress was willing to give away the power over the purse to a President of the United States.79

IV. CONCLUSION

The Framers heeded the lessons of Roman and English history in drafting a Constitution that allocated only to Congress the power to appropriate monies from the Treasury. Intensive study of that history provided Senator Byrd with an unshakeable foundation for his arguments against the line item veto. During one of the debates, Senator Byrd quoted Shakespeare in describing himself as "a plain blunt man," who had "neither wit, nor words . . . nor the power of speech to stir men's blood."80 Surely no one was fooled by such self-effacement. Senator Byrd's understanding of the broad sweep of history and the history of the Constitution makes him a wise and formidable man.

77 Id. at 448-49.
78 BYRD, CHILD, supra note 49, at 704.
79 Transcript of Investiture of Robert Bruce King as United States Circuit Judge for the Fourth Circuit at 52 (Oct. 23, 1998).