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ESSAYS

THE PARTIAL VETO IN THE LUCEY ADMINISTRATION

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I cannot recall when I first became aware of the power of the Wisconsin gubernatorial partial veto. I am sure it was some time before I became governor, but I am equally sure that I did not become fully cognizant of its potential power until the veto pen was in my hand during the 1971-72 state budget. Although many other issues and events occupied my time, attention, and energy during those early years, the biggest legislative item to be dealt with was always the biennial budget. My use of the partial veto was an important part of the budget process. The record shows that I exercised the partial veto twenty times in the first biennium. Presumably, most of those vetoes used were my attempts to refine the language of the budget bill.

In Wisconsin, the state budget process has become quite complex and time consuming. Considering that it covers almost all government operations and runs well into billions of dollars, the effort is justified. The bureaucracy begins working on the next biennial budget almost from day one of the current biennium. During the fall months of each even numbered year, agency requests are reviewed, negotiated, and finalized for submission to the executive office.

Even the governor-elect is drawn into the process at this point. In late November and December of 1970, before I took the oath of office, I held budget hearings throughout the state and made countless decisions about levels of support for various programs and agencies. The final

* B.A. 1946, University of Wisconsin. Elected to Assembly 1948; elected lieutenant governor in 1964. Elected governor 1970. Term served: January 4, 1971 through July 6, 1977.

document had to be ready for submission to the legislature together with a budget message early in the legislative session.

The legislative budget process extends over a period of several months. With a little luck and a lot of hard work by the legislature's Joint Committee on Finance, its staff, the Wisconsin Department of Administration and other executive departments, the governor's staff, and the legislative leadership, the budget is usually ready for the governor's signature on or about July 1, which marks the start of the fiscal period.

The governor considers using the partial veto only after his or her staff reviews the budget. Gubernatorial attitudes range from that of Governor Warren P. Knowles, who felt that any veto should be limited to correction of language that failed to reflect the perceived intent of the legislature, to the deftness of Tommy Thompson, who creates words by vetoing letters so that the surviving letters spell words that were never considered by the legislature.

While governor, I was sometimes concerned that I might have been abusing the partial veto. On the basis of what has followed, though, I guess I was moderate in my use of the partial veto scalpel. Although I had much less regard for legislative intent than did my immediate predecessor (Governor Knowles), I did not reach out as far as some of my successors, particularly our incumbent, Governor Tommy Thompson.

Although the need for the partial veto was eloquently stated by Governor Francis E. McGovern in 1913, it was not until 1930 that the state constitution was amended to allow for the partial veto. McGovern was concerned that the adoption of the omnibus spending bill would limit the governor's legislative role. The governor could either veto the entire bill or sign it into law, including those portions he found objectionable. Although the constitutional amendment of 1930 addressed this concern about the omnibus spending bill, the actual language went well beyond that, covering all legislation that included an appropriation. Governors, myself included, have from time to time found the partial veto a useful tool when dealing with single-purpose appropriation bills.

For example, during my administration, a bill arose concerning what we now call "family values." I was persuaded that, while family ranked right up there with apple pie and motherhood, the bill served no useful purpose and was a waste of the taxpayer's money. Since I did not want to go on record as being opposed to something as sacrosanct as apple pie or motherhood, I chose to apply the partial veto. Obviously, I knocked out the appropriation. Once I did that, though, the language of the bill was beyond my reach. When I informed my legal counsel that I found some of the language objectionable, he assured me that there was no

problem. He said it was all a matter of chronology. If I first got rid of the objectionable language and only then crossed out the appropriation, I would be well within my constitutional authority. I did just that, and my action went unchallenged.

On another occasion, a budget bill arose that included authority to borrow money for some bridges. I did not think the need was sufficiently urgent to require borrowing money and paying interest, but in a weak moment I decided to authorize just enough borrowing for one small project. I exercised a digit veto and reduced the authorization from \$25 million to \$5 million. Judge Robert Warren, then Wisconsin Attorney General, issued an opinion stating that by tampering with the amount I had in effect invalidated the entire item. Since I was only mildly interested in retaining any part of the authorization, I did not challenge the Warren opinion. At the time, I suspected that if I had taken the matter to the supreme court, I would have received approval for the digit veto. The court has since confirmed my suspicion.

In preparing this essay, I tried to recall an appropriation bill, other than the biennial budget, that was improved in a meaningful way by one of my partial vetoes. The one that comes to mind was actually processed by my successor, Martin Schreiber, who altered the campaign finance bill. The bill allowed taxpayers to earmark a dollar from their taxes for public finance of political campaigns. The legislative language would have required the taxpayer to use the tax return to make a voluntary contribution in addition to the tax he or she already owed. This would have called upon taxpayers to display their generosity to politicians at the time of year when their enthusiasm for government is at its low point. The bill, or at least that portion of it, would have achieved nothing. Acting Governor Schreiber, to his credit, gave the bill meaning. It is my understanding that the bill's drafters, who personally favored public finance of campaigns, did what they could in arranging the words to facilitate a possible partial veto.

In March of 1977, I received a call from President Jimmy Carter. He asked me to resign as governor to become the U.S. Ambassador to Mexico. My first reaction was to question why an incumbent governor should resign to accept a diplomatic appointment. The President said that what he wanted me to do in Mexico was important. Although it was not an easy decision, I did agree to accept the appointment. However, I insisted that I could not leave the governorship until the budget cycle was completed.

Accordingly, in early April I announced my intention to resign after I signed my final biennial budget in July. Time that might have been bet-

ter spent in a Spanish language seminar was devoted to the battle of the budget. It was an especially contentious budget that year. Frankly, becoming a lame duck governor in April did little to enhance my bargaining power. But since I had been elected for two four-year terms, I felt duty bound to complete my fourth biennial budget cycle before departing to warmer climes.

As usual, the budget document lent itself to the veto scalpel. In fact, this time I made more than one hundred partial vetoes. In each and every instance, I was persuaded that the changes I was making were in the public interest. Since I was about to leave elected office, I was in no way constrained by purely political considerations. Perhaps it should not have been surprising when more than half of my carefully crafted vetoes were overridden by a legislature apparently somewhat elated to be finally free of the heavy hand of a strong-willed governor.

There are a few lessons we all can learn from my experience with the Wisconsin partial veto and my observations of the process since leaving the governorship. Whether it is on the national scene or in state capitols around the country, the role of the executive in the American political system is self evident. In a parliamentary system, the prime minister is obviously the chief legislator. In my view, an American president or governor fills the same role. I have a sense that, on both the national and state levels, citizens are increasingly looking to the executive to curb fiscal excesses of legislative bodies.

Certainly, the Wisconsin constitutional power or the legislation veto should not be repealed. I do not remember how I voted on the recent constitutional amendment limiting the partial veto power, but as I study the matter, I conclude that it is a good idea. A partial veto that creates new words by selectively repealing letters from existing words is hardly what our predecessors had in mind in 1930 when they attempted to give the governor power to cope with the omnibus spending bill.

Would I recommend that other states adopt the Wisconsin constitutional language? Yes, but maybe our law—the result of a series of pro-executive supreme court decisions—needs some limitations. Ideally, there should be more than a line item veto. The law should permit changes in language even to the point of reversing legislative intent. It troubles me, though, that the governor, along with one-third of the senators plus one member in either house of the legislature, can rule the state. Perhaps there should be a study as to how we in Wisconsin might limit the partial veto power beyond what was accomplished by the constitutional amendment of 1990.

Additionally, I feel that the President of the United States should have some partial or item veto power. I suppose the issue is a bit too arcane to hope for a constitutional amendment, so the President is going to have to try for legislation. Once the power is in the hands of the President, repeal would be very difficult.

About the time of the most recent inauguration, there was talk of a compromise that would give President Bill Clinton a partial veto with Congress having the power to override by a simple majority. This would certainly be better than nothing. If Presidents could not get the requirement of a two-thirds majority (which is usual for veto overrides), they could try for a sixty-percent or at least a constitutional majority. In the House, this would require 218 votes for an override, rather than simply one more than half of the members present and voting. This would permit members who could not bring themselves to vote against their colleague's favorite pork to simply excuse themselves from the chamber and deprive their friend of one of the essential 218 votes required for an override. Most important, a partial veto for the President could save taxpayers a few billion dollars.

