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THE PARTIAL VETO AS A NEGOTIATING TOOL

MARTIN J. SCHREIBER*

The founding fathers of the Wisconsin Constitution probably never envisioned a partial veto that would allow a governor to strike out words and phrases to make completely new sentences. Nevertheless, I do not consider the governor's veto to be too powerful, provided that both sides understand the ground rules. The partial veto provides too much power only when the legislature does not know the ground rules. With some direction from the Wisconsin Supreme Court, the legislature now knows the parameters within which it can work. Currently, the Wisconsin Legislature reasonably expects that anything could be vetoed. It is a broad rule, but at least it is clear.

The significance of the governor's partial veto lies not in what it deletes from legislation, but in what it adds to the governmental process as a whole. The partial veto creates a stronger working relationship between the executive and the legislative branches of government. It forces better communication and flushes out more details from both sides. The partial veto is analogous to an employment review. If an employer reviews an employee every year and says, "This is what you did wrong," it can be traumatic for both parties. On the other hand, if evaluation occurs on an almost daily basis, the process is much easier.

The fact that the governor *can* use the partial veto is useful in itself, it is not necessary to use the partial veto. The threat of the partial veto is often enough to force the legislature to cooperate with the governor and to work out differences. Clearly, the potential use of the partial veto is one of its main benefits.

A significant aspect of the partial veto debate is that those not in power think it should be restricted, while those in power think it is great. Asking whether or not the state is better off with the partial veto is similar to asking whether or not society is better off with fire. The answer to both questions is yes, if they are properly used and controlled. It is al-

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ways possible that a person could use the veto in a reckless and misguided manner. For example, the veto could be misused by the governor to whip a legislative body back into line, but that would be foolish. It would simply widen any gap that exists between the two branches. The legislature would most likely retaliate by offering less to the governor. Both the legislators and the governor must understand their common goals, as well as their respective obligations and responsibilities, for any major piece of legislation. My hope is that the veto will be used only as an extension for adopting policy rather than as a political weapon. That was my intention as acting governor.

While I was in office, much of the veto power was undefined. The veto seemed like a fresh trail to be cut. Not knowing what was around the corner, I felt like Lewis and Clark on an exploration.

I received a lot of attention for vetoing particular clauses and words in a bill that originally required taxpayers to add one dollar to their tax liabilities if they wanted the dollar to go to the Election Campaign Fund. Using the partial veto, I changed the wording to instead allow taxpayers to check off one dollar from the state general funds to be designated for the Election Campaign Fund. In this way, the taxpayer could elect to support the Election Campaign Fund without having to spend an extra dollar. The Wisconsin Supreme Court, in *State ex rel. Kleczka v. Conta*,¹ upheld my use of the veto. The court held that my use of the veto "reflected a change of policy which the Governor had the authority to make under the Constitution because his authority is coextensive with the authority of the Legislature to enact the policy initially."²

Some people might argue that I stepped over the executive power boundary into legislative territory and that I prenegotiated or pre-planned the partial veto of the bill. Generally, one assumes that the governor vetoes only after the legislation hits his or her desk. Some have said that my decision was made in the course of the discussion and debate of the legislation. They contend that I wanted the bill in front of me, in any form, so I could adjust it to my liking.

If I did any pre-planning, I was pre-planning for a greater democratic process rather than subverting the legislative branch. I was not trying to test the veto powers of the governor nor was I attempting to make a test-case of the process. Being less interested in the structure of government, I was more concerned with public policy. Had it not been for this public policy issue, I may never have used the partial veto. I did not feel the

1. 82 Wis. 2d 679, 264 N.W.2d 539 (1978).

2. *Id.* at 709, 264 N.W.2d at 552.

need to test my power against the legislature, nor did I feel the need to subjugate them to me. I did not want to force them to the table. I just wanted to get the public policy through.

I did not try to figure out the probability of my action being upheld. I just looked at the increasing costs of campaigns and saw the need for a public policy to take big money out of the picture—to make sure that individuals are elected more by the people than by the big dollar.

I do not criticize Tommy Thompson for his extensive use of the partial veto. My regret is that I did not have the opportunity to be creative and use it more often. You go to the well once, and you go concerned about how deep the water is and whether the bucket will get stuck. But once you pull it up and taste the water, it is sweet.

Wisconsin's experience with the partial veto fosters my belief that the President of the United States should also have partial veto powers. The President faces budget bills of billions of dollars, and the lack of a partial veto allows a lot of refuse to remain in the budget. Much of the President's bargaining power is removed when his responses are limited to either total acceptance or total rejection. That is a ridiculous way to run anything, whether it is a government or a business.

Ultimately, the veto furthers the ability of a governor to pursue public policy. A governor has an agenda. The governor was elected, theoretically, because people wanted that agenda to be executed. The legislature should understand that a leader elected by the people of Wisconsin will do everything to institute the policy agenda promised to the people during the campaign.

