The Wisconsin Partial Veto: Where Are We and How Did We Get Here? The Definition of "Part" and the Test of Severability

John S. Weitzer
COMMENT

THE WISCONSIN PARTIAL VETO: WHERE ARE WE AND HOW DID WE GET HERE? THE DEFINITION OF "PART" AND THE TEST OF SEVERABILITY

The life of the law has not been logic: it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow-men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed. The law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics. In order to know what it is, we must know what it has been, and what it tends to become.¹

Oliver Wendell Holmes

I. INTRODUCTION

Since 1930, Wisconsin governors have possessed the authority to veto "parts" of appropriation bills under article V, section 10 of the Wisconsin Constitution.² Through a line of cases,³ the Wisconsin Supreme Court has broadly interpreted the definition of "part" and whether a "part" of an appropriation bill may be severed by veto.⁴

². After legislative passage of the proposed amendment as Enrolled Jt. Res. 37, 1927 Wis. Laws 986, and Enrolled Jt. Res. 43, 1929 Wis. Laws 1079, Wisconsin voters ratified the partial veto amendment at the 1930 general election. As ratified in 1930, the constitutional amendment stated that "[a]ppropriation bills may be approved in whole or in part by the governor, and the part approved shall become law." Wis. Const. art. V, § 10.
³. The Wisconsin Supreme Court has interpreted the article V, section 10 grant of partial veto authority on six separate occasions: State ex rel. Wisconsin Senate v. Thompson, 144 Wis. 2d 429, 424 N.W.2d 385 (1988); State ex rel. Kleczyka v. Conta, 82 Wis. 2d 679, 264 N.W.2d 539 (1978); State ex rel. Sundby v. Adamany, 71 Wis. 2d 118, 237 N.W.2d 910 (1976); State ex rel. Martin v. Zimmerman, 233 Wis. 442, 289 N.W. 662 (1940); State ex rel. Finnegan v. Dammann, 220 Wis. 143, 264 N.W. 622 (1936); State ex rel. Wisconsin Tel. Co. v. Henry, 218 Wis. 302, 260 N.W. 486 (1935).
⁴. Arthur J. Harrington, The Propriety of the Negative—The Governor's Partial Veto Authority, 60 MARQ. L. REV. 865 (1977); see Mary E. Burke, Comment, The Wisconsin Partial Veto:
As Oliver Wendell Holmes indicated, in order to know an area of the law, "we must know what it has been, and what it tends to become." Therefore, this Comment will critically explore the development of the court’s definition of "part" and the test of partial veto validity. In Part II, this Comment presents a cursory illustration of the current state of the governor’s partial veto power. Part III provides a historical summary of the Wisconsin partial veto. Finally, Part IV analyzes in detail the six cases that have dealt with the interpretation of "part" and the test of severability.

This Comment suggests that the Wisconsin Supreme Court’s broad interpretation of article V, section 10 provides no limitations upon a Wisconsin governor's partial veto powers. In addition, this Comment argues for adoption of the Hansen test of partial veto validity by either amendatory efforts of the Wisconsin Legislature or judicial review by the Wisconsin Supreme Court.

II. THE CURRENT STATE OF AFFAIRS

Currently, the Wisconsin governor may veto any part of an appropriation bill as long as the portion of the bill remaining constitutes a "complete, entire, and workable law." The governor may delete individual words, eliminate digits, and reduce the amounts of appropriations in a budget bill. However, the governor may no longer create new words by striking individ-
ual letters in the words of an enrolled bill. Guided by these standards, the Wisconsin governor may even change legislative intent and policy.

In 1991, Governor Tommy G. Thompson exercised his partial veto power a record 457 times on the legislature’s proposed 1991-93 state budget. In one section of the state budget, Governor Thompson vetoed parts of Section 2437d (Aid to Milwaukee Public Schools) by deleting words, digits, and punctuation marks to dramatically alter Section 2437d. Before partial veto, Section 2437d required the governor to submit a spend-


11. Wisconsin Senate, 144 Wis. 2d at 448, 424 N.W.2d at 392 (citing State ex rel. Sundby v. Adamany, 71 Wis. 2d 118, 130, 237 N.W.2d 910, 916 (1976)). Wisconsin Senate does, however, recognize a “germaneness” or “topicality” requirement. Id. at 451-52, 424 N.W.2d at 393-94.

12. The following list illustrates the number of partial vetoes executed by Wisconsin governors per legislative session from the creation of the partial veto power until the 1990-91 legislative session:

<table>
<thead>
<tr>
<th>Year</th>
<th>Partial Vetoes</th>
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<tbody>
<tr>
<td>1931</td>
<td>12</td>
</tr>
<tr>
<td>1933</td>
<td>12</td>
</tr>
<tr>
<td>1935</td>
<td>0</td>
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<tr>
<td>1937</td>
<td>0</td>
</tr>
<tr>
<td>1939</td>
<td>1</td>
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<tr>
<td>1941</td>
<td>1</td>
</tr>
<tr>
<td>1943</td>
<td>0</td>
</tr>
<tr>
<td>1945</td>
<td>1</td>
</tr>
<tr>
<td>1947</td>
<td>4</td>
</tr>
<tr>
<td>1963</td>
<td>0</td>
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<tr>
<td>1965</td>
<td>1</td>
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<td>1967</td>
<td>0</td>
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<tr>
<td>1969</td>
<td>27</td>
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<tr>
<td>1971</td>
<td>20</td>
</tr>
<tr>
<td>1973</td>
<td>57</td>
</tr>
<tr>
<td>1975</td>
<td>73</td>
</tr>
<tr>
<td>1977</td>
<td>111</td>
</tr>
</tbody>
</table>

TOTAL: 1844


13. Id. at 11.

14. Section 2437d deals with the repeal and recreation of Wis. Stat. § 119.80 (1991-92). As proposed by the legislature, the statute read as follows (redlined portions vetoed):

119.80 Spending Plan. (1) By January 1, 1993; the governor and the state superintendent shall submit to the joint committee on finance, and to the appropriate standing committees in each house of the legislature under s. 13.172(3) a joint proposal for the expenditure of the funds in the appropriation under s. 20.255 (2) (ec) in the 1992-93 school year, other than the funds specified under s. 119.82 (3): Within 30 days after receiving the proposal, each such standing committee may submit written recommendations on the proposal to the joint committee on finance:

(2) The joint committee on finance shall schedule a meeting to approve, modify or disapprove the plan.

(3) Any change to a proposal approved by the joint committee on finance is subject to the committee’s review and approval.

After partial veto the statute reads as follows:

119.80 Spending Plan. the governor shall submit to the joint committee on finance a proposal for the expenditure of the funds in the appropriation under s. 20.255 (2) (ec) in the 1992-93 school year. Within 30 days after receiving the proposal, the joint committee on finance shall approve the plan.

Executive Partial Veto, supra note 12, at 11.
ing proposal to the Joint Committee on Finance for approval, modification, or denial. After the partial veto, Section 2437d required the Joint Committee on Finance to approve the governor's plan within thirty days. Additionally, after the partial veto the Joint Committee on Finance could neither modify nor deny the expenditure but could only approve the funds. Therefore, the partial veto of Section 2437d transformed the Joint Committee on Finance into a rubber stamp, insofar as aid to the Milwaukee public schools is concerned.

In Section 2135t (State School Property Tax Credit), Governor Thompson again vetoed individual words, digits, and punctuation marks. As passed by the legislature, Section 2135t created a complex mechanism for determining the tax credit that municipalities would receive for state school properties. The Section determined the property tax credit for each municipality by utilizing such variables as fair market value and the consumer price index. Exercising his partial veto authority, Governor Thompson formed a new sentence by eliminating more than 100 words in the original section while leaving only seven.

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15. *Id.* "The committee is a joint standing committee composed of 8 senators and 8 representatives and must include members of the majority and minority party in each house. A senate member and an assembly member are designated as chairpersons by the presiding officers of their respective houses." WISCONSIN LEGISLATIVE REFERENCE BUREAU, STATE OF WISCONSIN 1991-92 BLUE BOOK 276-77 (1991) [hereinafter BLUE BOOK].


17. *Id.*

18. *Id.*


20. *Id.*

21. *Id.*

22. *Id.* Section 2135t read as follows (redlined portions vetoed):

SECTION 2135t. 79.10 (4) of the statutes is hereby amended to read:

79.10 (4) STATE SCHOOL PROPERTY TAX CREDIT. In 1993 and thereafter, each municipality shall receive, from the appropriations under s. 20.835 (3)(c) and (d) an amount determined by multiplying the school tax rate by the estimated fair market value in excess of $2,500, but not exceeding the following total estimated fair market value, of every parcel of taxable property on which a principal dwelling is located in the municipality and for which a claim for a credit under sub. (7m) (b) 1. b. is made by the owner of the principal dwelling:

(a) In 1993, $30,600;

(b) In 1994, $35,600,

(c) In 1995 and thereafter, $35,000 plus an amount in each year rounded to the nearest $100 equal to the percentage increase in the consumer price index for all urban consumers, U.S. city average, computed by the federal department of labor for the year ending on the December 31 preceding the year of the property tax levy to which the credit applies multiplied by the maximum amount of estimated fair market value eligible for the credit in the year preceding the year of the property tax levy to which the credit applies.

After veto the section reads as follows:
Thompson created a general tax credit fund that was not linked to property.23

These examples illustrate the Wisconsin governor's broad power to veto parts of an appropriation bill.24 However, in order to fully understand the scope and implications of the governor's current partial veto power, the history of the partial veto must be explored.


The original Wisconsin Constitution, adopted in 1848, did not provide the governor with the power of partial veto.25 Under the 1848 Wisconsin Constitution, the governor accepted or denied the bill as a whole. The governor's veto authority lost much in the way of strength when the Wisconsin Legislature embraced the use of the omnibus appropriation bill26 in the

SECTION 2135t. 79.14 of the statutes is to read:

79.14 SCHOOL TAX CREDIT. the appropriations under s. 20.835 (3)(b) is $319,305,000.

Id. Using the partial veto, Governor Thompson created Section 79.14 of the Wisconsin Statutes. In addition, he changed the property tax credit to a general tax credit. As the legislature passed the section, the tax credit would be determined on a case by case basis. As created by the Governor Thompson, Section 79.14 provides a general fund for school tax credit.

23. Id.

24. The above examples of the governor's partial veto authority were selected to illustrate the breadth of the governor's power to veto in part. Governor Thompson exercised the partial veto 457 times on the 1991-92 budget bill, providing an ample source of examples.

Section 2685m and Sections 9238-47 provide additional examples of the extent of the Wisconsin governor's partial veto powers. Both sections were originally more than 150 words in length. After veto, both sections contained only one sentence. The partial veto of Sections 9238-47 illustrates Governor Thompson's creative use of the partial veto. He combined words, digits, and punctuation marks from three different sections to create a new piece of legislation. 1991 Wis. Laws 39, §§ 2685m, 9238-47.

25. The Wisconsin Constitution declared that:

Every bill which shall have passed the legislature shall, before it becomes a law, be presented to the governor. If he approve, 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 upon the journal, and proceed to reconsider it.

Wis. Const. art. V, § 10 (1848).

26. In Martin v. Zimmerman, the Wisconsin Supreme Court defined omnibus appropriation bills and their purpose as:

[T]he practice of jumbling together in one act inconsistent subjects in order to force a passage by uniting minorities with different interests when the particular provisions could not pass on their separate merits, with riders of objectionable legislation attached to general appropriation bills in order to force the governor to veto the entire bill and thus stop the wheels of government or approve the obnoxious act.

233 Wis. 442, 447-48, 289 N.W. 662, 664 (1940).
1911 legislative session. Preceding state budgets had been "enacted as a series of agency appropriation bills, permitting a governor to veto individual appropriations by vetoing individual bills. By contrast, packaging multiple budget and policy items together in an omnibus appropriations bill forced the governor into an 'all or nothing' appropriation veto situation."

On August 7, 1913, Governor Francis E. McGovern delivered a special message to the legislature expressing his discontent with the legislature's use of the omnibus appropriation bill:

[T]he significant result of the change (to omnibus appropriation bills) has been to practically nullify the executive veto with respect to all financial measures. . . . The only alternative presented therefore was to sign these bills, defective in a number of particulars as I regarded them, or to veto them as a whole, thus rejecting what I approved as well as what I disapproved. Governor McGovern also argued that the legislature's use of the omnibus appropriation bill skewed the balance of power in favor of the legislature:

[U]nder the budget plan of appropriating money the executive department no longer exercises the influence or power it once had or was intended by the constitution to possess. It seems to me therefore something should be done to restore matters to the equilibrium of power and responsibility that has always existed between the executive and legislative branches of government in respect to these matters.

Speaking out against the imbalance, Governor McGovern pleaded for additional gubernatorial power: "With the introduction of the budget system and the framing of money bills as omnibus measures, authority should be conferred upon the governor that he does not now possess."

Fourteen years later, a constitutional amendment was introduced in the legislature to provide the governor with additional veto authority. The proposed amendment would have permitted the governor of Wisconsin to "disapprove or reduce items or parts of items in any bill appropriating

28. Burke, supra note 4, at 1399; see also Harrington, supra note 4, at 876 (stating that Wisconsin governor placed in a precarious veto situation).
30. Id.
31. Id.
money.” However, the proposed amendment did not pass the Senate or the Assembly.

In 1927, the legislature proposed another constitutional amendment that permitted the governor to veto “parts” of an appropriation bill. The 1927 and 1929 legislatures passed the amendment, which was subsequently placed on the November 1930 general election ballot. Wisconsin voters ratified the partial veto amendment by a five-to-three margin. Therefore, as of 1930, the Wisconsin Constitution authorized the governor to veto appropriation bills in whole or in part.

The amendment provided the governor with additional power to correct the imbalance between the legislature and the governor. However, the scope of that new veto power was vested in the word “part” and the extent of that power was unknown and untested.

IV. THE WISCONSIN SUPREME COURT AND THE PARTIAL VETO

A. First Interpretation

The Wisconsin Supreme Court first interpreted the scope of the partial veto power under article V, section 10 of the Wisconsin Constitution in

33. Id.
34. Id.
35. S.J. Res. 35, 1927-28 Wis. Legis. (1927). Interestingly enough, although the word “part” was used in the resolution, “Senator William Titus [who introduced the amendment] requested that the Wisconsin Legislative Reference Bureau draft a resolution ‘to allow the Governor to veto items in appropriations bills.’ However, there is no record of hearings concerning the use of ‘part’ as opposed to ‘item’ in this resolution.” Harrington, supra note 4, at 877 n.43 (citing LEGISLATIVE REFERENCE BUREAU, THE USE OF THE PARTIAL VETO IN WISCONSIN, INFORMATIONAL BULLETIN 75-IB-6, at 2 (1975)).

In addition, a cover sheet of the drafting records of 1927 S.J. Res. 35, signed by Senator William Titus and dated February 8, 1927, states, “res. to permit Gov. to veto items in app. bills.” Drafting Records, S.J. Res. 35, 1927-28 Wis. Legis. (1927), microformed on 1927 Senate Joint Resolutions 1 to 73 (State Microform Lab.).

In a letter dated February 18, 1927, the Chief of the Legislative Reference Library wrote Senator Titus and stated, “Enclosed herewith is a revised draft of the Joint Resolution you asked us to prepare, to allow the Governor to veto items in appropriation bills.” Id. Choosing the word “part” while referring to the resolution as a resolution allowing the veto of “items” suggests that Senator Titus and the Chief of the Legislative Reference Library used the terms interchangeably.

36. PARTIAL VETO, supra note 27, at 3.
37. Id. The partial veto amendment was approved by a statewide popular vote with 252,655 in favor of the amendment and 153,703 opposed. Id.
38. The Wisconsin Constitution as amended in 1930 read:

Every bill which shall have passed the legislature shall, before it becomes a law, be presented to the governor .... Appropriation bills may be approved in whole or in part by the governor, and the part approved shall become law, and the part objected to shall be returned in the same manner as provided for other bills.

WIS. CONST. art. V, § 10 (1930).
State ex rel. Wisconsin Telephone Co. v. Henry.\textsuperscript{39} On April 2, 1935, the Wisconsin Telephone Company filed an original action with the state supreme court asserting that Governor Philip La Follette's veto of certain parts of Assembly Bill 48\textsuperscript{40} was unconstitutional.\textsuperscript{41} Wisconsin Telephone asserted that the governor's partial veto powers did not include the severance of provisos or conditions inseparably connected to appropriations.\textsuperscript{42}

In an opinion written by Justice Fritz, the court upheld Governor La Follette's partial vetoes.\textsuperscript{43} The court held that the portions of Assembly Bill 48 "were not provisos or conditions which were inseparably connected to the appropriation bill."\textsuperscript{44} The court began its analysis by observing that article V, section 10 granted the governor the power to veto in whole or in part.\textsuperscript{45} Reasoning that the drafters of the 1930 amendment had specifically chosen the word "part" over the word "item" to define the scope of the veto power,\textsuperscript{46} the court concluded that "part" provided a broader meaning than "item," and that the legislature intended a broad grant of veto power.\textsuperscript{47}

Because "part" was not given any special or technical meaning within article V, section 10, the ordinary meaning of the word would be given effect.\textsuperscript{48} The court, citing Webster's New International Dictionary, defined "part" as:

One of the portions, equal or unequal, into which anything is divided, or regarded as divided; something less than a whole; a number, quantity, mass, or the like, regarded as going to make up, with others or another, a larger number, quantity, mass, etc.,

\textsuperscript{39} 218 Wis. 302, 260 N.W. 486 (1935).

\textsuperscript{40} 1935 Wis. Laws ch. 15 (A. Bill 48). Assembly Bill 48 was titled, "An act to raise revenues for emergency relief purposes, and making appropriations," and the bill's primary purpose was the appropriation by the state of funds necessary for emergency relief. Sections 1 and 9 of the bill declared the purpose of the legislature, Sections 2-7 provided for the distribution of the appropriated funds, and Section 8 contained provisions for appropriation of the funds for relief efforts. Henry, 218 Wis. at 307-08, 260 N.W. at 489.

\textsuperscript{41} Governor La Follette approved all of Assembly Bill 48 except for Sections 1, 8.3-.9, and 9. Sections 1 and 9 stated the legislative intent of the act. Henry, 218 Wis. at 308-09, 260 N.W. at 489-90.

\textsuperscript{42} \textit{Id.} at 303-04, 260 N.W. at 487-88.

\textsuperscript{43} \textit{Id.} at 306, 260 N.W. at 488.

\textsuperscript{44} \textit{Id.} at 309, 260 N.W. at 490.

\textsuperscript{45} \textit{Id.}

\textsuperscript{46} \textit{Id.} at 313, 260 N.W. at 491. The court reasoned that if the legislature wanted to limit the governor to the veto of an "item" or "part of an item," it could have "qualifi[ed] or limit[ed] the well known meaning and scope of the word 'part'." \textit{Id.} This line of inference suggests that the use of "part" instead of "item" signaled a broad grant of authority by article V, section 10 of the Wisconsin Constitution.

\textsuperscript{47} \textit{Id.}

\textsuperscript{48} \textit{Id.}
whether actually separate or not; a piece, fragment, fraction, member or constituent. 49

Thus, the court concluded that the portions of the bill constituted parts of an appropriation bill that would be subject to partial veto. 50

Next, the court analyzed whether the “part” was severable from the rest of the bill under the Wisconsin Constitution. 51 The court reasoned that the provisions were severable because they “were not provisos or conditions upon which the appropriation in the approved portions [of the bill] was made dependent or contingent.” 52 Thus, the central issue concerning the propriety of the governor's partial veto developed into whether a “part” of an appropriation bill was separable and therefore severable. 53

The Wisconsin Supreme Court began its analysis of separability with the text of Assembly Bill 48. 54 Looking to the four corners of the text, the court noted “an entire absence of any expressed proviso or condition, or otherwise expressly stated connection between the parts disapproved and the parts which were approved by the governor.” 55 In addition, the court stated that the “parts” approved, “as they were in the bill, as it was when originally introduced, and as they continued therein at all times and are still

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49. Id. (citing WEBSTER'S NEW INTERNATIONAL DICTIONARY 1781 (2d ed. 1934)). This argument provides no limitations on the partial veto power. The problem with the court's definition of "part" is that the definition is so broad as to be meaningless. The statement by Oliver Wendell Holmes that “the life of law has not been logic” and has a “good deal more to do than the syllogism in determining the rules by which men should be governed,” seems to apply here. HOLMES, supra note 1, at 1.

50. Note that in the present case, the court was considering the severability of whole sections and subsections of Assembly Bill 48, and that the analysis presented was not geared toward the partial vetoes of words, letters, numerals, and punctuation marks. As one commentator noted:

Henry, however, evaluated gubernatorial veto of large "parts": sections and subsections of a legislative bill. To the Henry court, a large "part" had an unambiguous meaning. Later litigation concerned the partial veto of ever smaller "parts" of legislative bills. The Henry opinion does not reflect the court's anticipation that its textual analysis eventually would be applied to individual digits and letters, or that the meaning of a "part" itself would become completely ambiguous.

Burke, supra note 4, at 1403.

51. Henry, 218 Wis. at 308 n.1, 260 N.W. at 489 n.1.

52. Id. at 313-14, 260 N.W. at 491. The court seems to be saying that there are essentially two elements to be considered in determining the governor's scope of partial veto powers under article V, section 10 of the Wisconsin Constitution. First, it must consider whether the portion vetoed is a "part." Second, it must ask whether that "part" is an inseparable proviso or condition. Because the element of whether a portion of a bill is a "part" is easily satisfied, limits to the scope of the governor's veto power must necessarily reside in the second element.

53. Id. at 314-17, 260 N.W. at 492-93.

54. Id. at 314-16, 260 N.W. at 491-92.

55. Id. at 314, 260 N.W. at 491.
in chapter 15, Laws of 1935, constitute[d] . . . a complete, entire, and workable law."

Furthermore, according to Section 10 of Assembly Bill 48 and Chapter 15 of the Laws of 1935, an express provision stated that "[i]f any provisions of this act, or the application thereof to any person or circumstance, is held invalid, the remainder of this act and the application of such provisions to other persons or circumstances, shall not be affected thereby." This express severability provision negated any inference that the parts approved by the governor depended upon all the other provisions.

The court also stated that it is well established in Wisconsin law that the elimination of material provisions in an act does not render the remaining valid provisions invalid. The court held that "if the part upheld constitutes . . . a complete law in some reasonable aspect," that part should be valid, "unless it appeared from the act itself that the legislature intended it to be effective only as an entirety and would not have enacted the valid part alone."

Citing State ex rel. Reynolds v. Sande, the court affirmed that:

If a statute consists of separable parts and the offending portions can be eliminated and still leave a living, complete law capable of being carried into effect "consistent with the intention of the legislature which enacted it in connection with the void part," the valid portions must stand. This is the rule and it has been consistently followed.

Thus, the court in Henry expressed an awareness and sensitivity toward the intentions of the legislature. Henry hinted that any partial veto that would

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56. Id.
57. Id. at 315-16, 260 N.W. at 492.
58. Id. at 316, 260 N.W. at 492.
59. Id. Henry analyzed the separability issue by comparing what happens to a law when a part has been deemed unconstitutional with what happens to a bill when a part has been deleted by the governor's veto. Id. at 317, 260 N.W. at 493. Although this analogy effectively explains whether an act can survive after a part has been deleted for constitutional purposes, the analogy loses strength when applied to the governor's partial veto. After the legislature passes a bill and the executive approves it, the bill, as envisioned by both branches, becomes law and contains the force of law. In an enforceable law, a presumption exists to preserve what remains after an unconstitutional part is excised. State ex rel. Reynolds v. Sande, 205 Wis. 495, 503, 238 N.W. 504, 507 (1931). However, after a legislature passes a bill and the executive approves and disapproves certain portions, the bill becomes transformed with the approved portions becoming law and the disapproved portions becoming extinguished. In this second instance, the approved portions of the bill should not be entitled to the presumption of preservation because what remains after partial veto has only been envisioned by the executive and not the legislature.
60. Henry, 218 Wis. at 316, 260 N.W. at 492.
61. Id. at 316, 260 N.W. at 491-92 (citing Reynolds, 205 Wis. at 503, 238 N.W. at 507).
leave a complete and workable law unreasonable and inconsistent with the legislature's intent could be considered invalid.

Further, *Henry* reasoned that there would be no difficulty considering the deleted portions of Assembly Bill 48 as independent and separable portions of the act if those portions were later considered to be unconstitutional.\(^2\) In the same vein, the court stated that there would be no difficulty considering the approved remains of Assembly Bill 48 to exist independently of the eliminated parts if the vetoed parts were later held unconstitutional and what remained constituted a complete and enforceable law.\(^3\)

In addition, *Henry* articulated the policy lurking behind the power of the governor's partial veto: "[T]here is nothing in that provision which warrants the inference or conclusion that the governor's power of partial veto was not intended to be as coextensive as the legislature's power to join and enact separable pieces of legislation in an appropriation bill."\(^4\)

The court reasoned that because the legislature is able to use the omnibus bill, "there are reasons why the governor should have a coextensive power of partial veto, to enable him to pass, in the exercise of his *quasi*-legislative function, on each separable piece of legislation."\(^5\) Therefore, the policy behind the partial veto empowered the governor to separate pieces of legislation that the legislature had packaged together within one omnibus appropriations bill.\(^6\)

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62. *Id.* at 317, 260 N.W. at 493.
63. *Id.*
64. *Id.* at 315, 260 N.W. at 492.
65. *Id.* This policy consideration provides the foundation for the Hansen test of severability. The power of the legislature to put separate pieces of legislation together in one bill should be countered by a governor's power to unpack these separate pieces of legislation. Therefore, the policy reasons behind *Henry* suggest that article V, section 10 provides the governor with only enough veto authority to unpack the various pieces of legislation that the legislature has bound together in an omnibus bill.
66. The view that the governor's veto powers are coextensive with the legislature's power to pack appropriation bills exhibits a concern by the court for the balance of powers between the executive and legislative branch. The court's sanctioning of the governor's *quasi*-legislative partial veto power seems to be a direct response to the loss of veto power by the governor due to the advent of the omnibus appropriation bill. One commentator suggests that "[t]he opinion in *Henry* was also significant in that the court implied that it would not be influenced by the restrictive notion of separation of powers so frequently employed by courts in other jurisdictions to invalidate a governor's exercise of the veto authority." Harrington, *supra* note 4, at 879-80. Harrington's conclusion that the Wisconsin Supreme Court in *Henry* would not be influenced by separation of powers seems a bit extenuated. The *Henry* court did not allow a strict view of separation of powers to become an obstacle to correcting the legislature's overreach due to the omnibus bill. However, the court's sanction of the governor's *quasi*-legislative powers does not necessarily mean that the court threw out the doctrine of separation of powers. The doctrine of separation of powers may still operate, in this case, when the governor's partial veto exceeds the legislature's power to join and enact separate pieces of legislation in an appropriation bill.
The court held that because the declarations in Sections 1 and 9 of the bill only stated the intentions of the legislature, their enactment would not result in any "enforceable rule of conduct or action which would have constituted law" and, thus, no real change existed in the bill's operation.\(^6\) Because the changes created by Governor La Follette's partial veto were reasonable and consistent with the legislature's intent, *Henry* concluded that the portions of Assembly Bill 48 vetoed by Governor La Follette were not so inseparably connected with other parts of the bill that they could not be severed.\(^8\)

*Henry* provided the first interpretation of the partial veto authority of article V, section 10 of the Wisconsin Constitution. The court concluded that the validity of a partial veto depended upon whether the portion vetoed was a "part" and whether that "part" was severable. To determine whether a part was severable, the court conducted a textual search for express language that indicated whether the legislature intended any "part" of the bill to be inseparable. The court then proceeded to examine whether the approved portions of the bill constituted a complete and workable law. In addition, the court hinted that a partial veto may be considered invalid if the result created is unreasonable and inconsistent with the legislature's intent.

**B. Finnegan v. Dammann and Martin v. Zimmerman: The Early Years**

Shortly after *State ex rel. Wisconsin Telephone Co. v. Henry*, the governor's exercise of the partial veto prompted judicial review in *State ex rel. Finnegan v. Dammann*.\(^6\)\(^9\) The central issue in *Finnegan* was what constituted an "appropriation bill."\(^7\)\(^0\) Before the court analyzed that issue, however, it provided a summary of *Henry*: "(1) that the 1930 amendment permits the veto by the governor of any separable part of an appropriation bill; and (2) that this power to partially veto exists, although the part vetoed does not deal with appropriations."\(^7\)\(^1\) In spite of summarizing *Henry*, the court proceeded to state that "[s]ince the question here is whether Bill No. 312, S., was an appropriation bill, the doctrine of the Telephone Case [*Henry*] is not determinative here."\(^7\)\(^2\) The *Finnegan* court held that the par-

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68. Id.
69. 220 Wis. 143, 264 N.W. 622 (1936).
70. Id. at 146, 264 N.W. at 623.
71. Id.
72. Id. at 147, 264 N.W. at 623.
tial veto authority of the governor was restricted to bills containing an express appropriation.73

Finnegan added nothing to Henry's analysis of the definition of "part" and the test of severability. Finnegan did not provide an analysis of Henry, but only presented a summary of Henry's holdings. Indeed, Finnegan stated that the doctrine in Henry was inapplicable to the case at hand.

In 1940, the court addressed the alteration of legislative policy by partial veto in State ex rel. Martin v. Zimmerman.74 In Martin, the legislature had passed provisions that provided direct state aid to localities within the state.75 However, Governor Julius Heil struck certain provisions and saddled the costs of aid upon the localities themselves.76 The respondent contended that Governor Heil's use of the partial veto "so changed the legislative program or policy as to render the parts approved invalid."77

According to the court, the parties did not contest whether the parts approved by Governor Heil left a complete body of law of proper subject matter for separate enactment by the legislature.78 Even though this issue was not in contention between the parties, the court, citing Henry, concluded that the approved parts of the bill in question constituted an "effective and enforceable law on fitting subjects for a separate enactment by the legislature."79 Thus, Martin decided an issue that was not raised by the parties, but rather by the court.

Additionally, the respondent, citing State ex rel. Reynolds v. Sande, argued that although a part of a statute may be distinct and literally separable from the rest of the bill, this does not necessarily mean that the part may be disconnected from legislative intent.80 However, the court recalled that in Henry, the partial veto effectuated a change in policy that was upheld.81

73. Id. at 148-49, 264 N.W. at 624. Finnegan concluded that the vetoed bill "deals with appropriations neither in the title nor in the body of the act, and would not be considered such a bill either in common speech or in the language of those who deal with legislative or governmental matters." Id. at 149, 264 N.W. at 624.
74. 233 Wis. 442, 289 N.W. 662 (1940).
75. Respondents Brief at 47, State ex rel. Martin v. Zimmerman, 233 Wis. 442, 289 N.W. 662 (1940) (State No. 21).
76. Id.
77. Martin, 233 Wis. at 445, 289 N.W. at 663.
78. Id. at 449, 289 N.W. at 665.
79. Id.
80. Respondents Brief at 46, Martin (No. 21).
81. Martin, 233 Wis. at 450, 289 N.W. at 665. The defective syllogism proffered by the court does not strengthen the court's holding concerning the disregard of legislative intent but may evidence a hidden policy decision by the court. Justice Hansen suggests that the court was avoiding subjective tests of partial veto authority and, instead, opted for the objective test. State ex rel. Kleczka v. Conta, 82 Wis. 2d 679, 721-22, 264 N.W.2d 539, 557-58 (1978) (Hansen, J., concurring
Therefore, the court reasoned, if the approved parts taken as a whole provided a complete workable law, then the partial vetoes were valid, regardless of any change in legislative intent.82

In addition, Martin discussed the purpose of article V, section 10: Its purpose was to prevent, if possible, the adoption of omnibus appropriation bills, logrolling, the practice of jumbling together in one act inconsistent subjects in order to force passage by uniting minorities with different interests when the particular provisions could not pass on their separate merits, with riders of objectionable legislation attached to general appropriation bills in order to force the governor to veto the entire bill and thus stop the wheels of government or approve the obnoxious act.83

The court further stated that both the legislature and the people conferred power upon the governor to approve appropriation bills in whole or in part for the purpose of combating the "very definite evils" inherent in the lawmaking processes in connection with appropriation measures.84

In deciding raised and unraised issues, Martin picked the "complete and workable law" test out of Henry's analysis of partial veto validity to operate as the sole factor in deciding whether disapproved parts were severable. By stressing the complete and workable law test, the court fully disregarded the importance of legislative intent with respect to severability. Henry concluded, only after lengthy analysis, that the change in legislative intent was minimal, and therefore the parts were not so inseparable that they could not be severed. However, Martin chose to forget the concerns in Henry regarding legislative intent.85

82. Martin, 233 Wis. at 450, 289 N.W. at 665. Here the court advances a defective argument. In Henry, the court maintained an awareness that the approved remains after partial veto must be reasonable and consistent with legislative intent. See supra notes 57-66 and accompanying text.

Martin wholly disregards these discussions in Henry. In Henry, the court examined the partial vetoes' effect on the legislative intent and concluded that the change was minimal. Id. Henry's authority should only extend to the proposition that small degrees of change in legislative intent may not effect the validity of the partial veto. Henry, however, should lend no authority to the holding of Martin, that any change in legislative intent is allowable.


84. Martin, 233 Wis. at 448, 289 N.W. at 664.

85. The author intentionally selected the word "chose" because the same seven justices decided Henry (1935), Finnegan (1936), and Martin (1940):
C. State ex rel. Sundby v. Adamany: Solidification of the Complete and Workable Law Test

On February 3, 1976, thirty-six years after Martin, the Wisconsin Supreme Court decided State ex rel. Sundby v. Adamany and reaffirmed the broad power of the governor to veto parts of an appropriation bill. In Sundby, Governor Patrick Lucey vetoed parts of nonappropriation language from an appropriation bill providing for local referenda. As passed by the legislature, the bill allowed towns to choose whether to hold a local referendum before increasing their own tax levy. Governor Lucey's partial veto deleted this optional language, however, and made mandatory what the legislature had deemed optional.

Before deciding the narrow question of severability, the court summarized Henry and Martin. According to the court, Henry held that the term "part" was broader than the term "item." In addition, Henry held that under article V, section 10 the governor could veto all parts of an appropriation bill, unless the parts constituted inseparable conditions or provisos tied to an appropriation. Therefore, Sundby concluded that Henry allowed severance of any part of an appropriation bill except provisos or conditions placed upon an appropriation. Consequently, Sundby declared that Martin had firmly established the complete and workable law test for determining the validity of the governor's partial veto.

(1) Marvin B. Rosenberry 1916-50 (C.J. 1929-50)
(2) Chester A. Fowler 1929-48
(3) Oscar M. Fritz 1929-54 (C.J. 1950-54)
(5) John D. Wickhem 1930-49
(6) George B. Nelson 1930-42
(7) Joseph Martin 1934-48

Blue Book, supra note 15, at 656.
The justices knew full well their discussion of the change of legislative intent in Henry. Their exclusion of the topic in Martin indicates a desire to disregard any alteration of the legislature's policies and affects how that alteration plays on the issue of severability.

86. 71 Wis. 2d 118, 237 N.W.2d 910 (1976).
87. Id. at 121-24, 237 N.W.2d at 911-12.
88. Id.
89. Id. at 124, 237 N.W.2d at 912. In Sundby, Governor Lucey vetoed clauses of sentences. Previously, partial vetoes involved only sections and subsections of appropriation bills. See State ex rel. Martin v. Zimmerman, 233 Wis. 442, 289 N.W. 662 (1940); State ex rel. Finnegan v. Damman, 220 Wis. 143, 264 N.W. 662 (1936); State ex rel. Wisconsin Tel. Co. v. Henry, 218 Wis. 302, 260 N.W. 486 (1936).
90. Sundby, 71 Wis. 2d at 129, 237 N.W.2d at 915.
91. Id. Sundby provides that any part of an appropriation bill is separable unless that part is a proviso or condition. Id. at 129-30, 237 N.W. at 916.
92. Id. at 130, 237 N.W.2d at 915-16. Sundby, however, based this holding on breakdowns in the Martin analysis. See supra notes 81-82 and accompanying text.
In addition, *Sundby* provided constitutional justification for the governor's assumption of legislative powers. The court reasoned that although the legislative power vests within the senate and the assembly, the governor possesses a role in that legislative process. The court stated that the governor can:

1. convene the legislature in emergencies,
2. communicate to the legislature the condition of the state,
3. recommend matters for the legislature's consideration,
4. transact all necessary business with the officers of the government,
5. expedite legislative measures,
6. execute laws, and
7. submit a biennial budget report to the legislature.

Therefore, the court reasoned, the governor has a role in legislation that is recognized by the Wisconsin Constitution. Furthermore, *Sundby* stated that *Henry* interpreted article V, section 10 to authorize the governor's use of quasi-legislative powers. According to *Sundby*, *Henry* declared that the quasi-legislative power was "intended to be as coextensive as the Legislature's power to join and enact separable pieces of legislation in an appropriation bill." Thus, *Sundby* concluded that the Wisconsin Constitution authorized the governor's participation in legislation.

Finally, the court rejected the argument that the governor may negate what the legislature creates but may not affirmatively change the result intended by the legislature. The court was not impressed by this subjective distinction, stating that "[e]very veto has both a negative and affirmative ring about it. There is always a change in policy involved." The court also thought that the constitutional requirements of article V, section 10 "fully anticipate[d] that the governor's action may alter the policy as written in the bill sent to the governor by the legislature." By refusing to recognize the negative versus affirmative veto power distinction, *Sundby* re-

93. Wis. Const. art. IV, § 1.
95. *Sundby*, 71 Wis. 2d at 133-34, 237 N.W.2d at 916-17 (citing Wis. Const. art. V, § 4 and Wis. Stat. § 16.46 (1975)). The reasons cited in *Sundby* do not support the proposition that the governor maintains a role in legislation. At most, the cited reasons support the proposition that the legislative branch and the governor are co-partners in the overall governmental process.
96. *Id.* at 133-34, 237 N.W.2d at 917-18.
97. *Id.* at 133, 237 N.W.2d at 917 (citing *Henry*, 218 Wis. at 314-15, 260 N.W. at 492).
98. *Id.* at 134, 237 N.W.2d at 918.
99. *Id.*
100. *Id.*
jected yet another subjective limitation on the governor's partial veto authority.

*Sundby* firmly embraced the complete and workable law test of partial veto validity. Under this objective test, the governor of Wisconsin may veto parts of an appropriation bill if the approved parts constitute a complete and workable law.101 In so holding, the court steered away from any subjective limitations on the governor's partial veto power.102

**D. State ex rel. Kleczka v. Conta: Down the Primrose Path**

Two years after *Sundby*, the Wisconsin Supreme Court expanded the scope of the partial veto. In *State ex rel. Kleczka v. Conta*, Acting Governor Martin Schreiber vetoed clauses and words, thereby altering legislative intent.104 As proposed by the legislature, the bill required taxpayers to add one dollar to their tax liabilities if they wished that sum to go to the state election campaign fund.105 Using the partial veto, Acting Governor Schreiber changed the section to enable the taxpayer to check-off one dollar from the state general funds for the purposes of the election campaign fund.106

In an opinion written by Justice Nathan Heffernan, the court affirmed severability as the test of partial veto validity.107 With an air of finality, the court concluded that the "test of severability has clearly and repeatedly been stated by this court to be simply that what remains be a complete and

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101. The complete and workable law test establishes no limitations on the governor's use of the partial veto. As Justice Hansen points out in *State ex rel. Kleczka v. Conta*: "It is difficult to envisage a governor deliberately exercising the partial veto power so as to produce a fragmentary or unworkable law." 82 Wis. 2d 679, 723, 264 N.W.2d 539, 558 (1978) (Hansen, J., concurring in part and dissenting in part). The governor can sever any part of an appropriation bill. Whether the governor may veto an inseparable condition or proviso remains an illusory limitation because the court has yet to decide that issue.

102. Some subjective considerations are:
(1) alteration of legislative intent,
(2) negative v. creative powers of the partial veto, and
(3) general separation of powers concerns.

103. 82 Wis. 2d 679, 264 N.W.2d 539 (1978).

104. *Id.* at 685, 264 N.W.2d at 541.

105. *Id.*

106. *Id.* As passed by the legislature, the bill read as follows (vetoed portions redlined): "(1) Every individual filing an income tax statement may designate that their income-tax liability be increased by $1 for deposit into the Wisconsin Election Campaign Fund for the use of eligible candidates under s. 11.50." *Id.* The section as changed by partial veto reads: "(1) Every individual filing an income tax statement may designate $1 for the Wisconsin Election Campaign Fund for the use of eligible candidates under s. 1150." *Id.*

107. *Id.* at 705, 264 N.W.2d at 550.
workable law.”108 In addition, the court pointed out that Martin and Sundby each held that the governor's partial veto may change legislative policy because the governor's partial veto power is as coextensive as the legislature's power to enact the laws.109 Thus, the governor's partial 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."110

The petitioners also argued that the parts vetoed were inseparable provisos and conditions of the appropriation and could not be partially vetoed.111 However, the court declared that any discussion of the inseverable nature of provisos and conditions in preceding cases constituted dicta.112 Therefore, the governor possessed the authority to veto provisos or conditions inseparably connected to an appropriation as long as what remained constituted a complete and workable law.113

This expansive holding prompted the first dissenting opinion in the history of the Wisconsin partial veto.114 Alarmed by the majority's holdings, Justice Connor T. Hansen argued that the principle of separation of powers demands "some palpable limit to the power of the governor to rewrite, by the device of the partial veto, bills which have passed the legislature."115 According to Justice Hansen, the governor should not possess the power to

108. Id. at 707, 264 N.W.2d at 551.
109. Id. at 707-08, 264 N.W.2d at 552.
110. Id. at 709, 264 N.W.2d at 552. Relying on Henry and Martin, Kleczka implies that the governor possesses a legislative power to alter legislative intent that is coextensive with the authority of the legislature to enact the policy initially. Id. at 708-09, 264 N.W.2d at 552. However, Henry held only that the governor possesses the power to separate pieces of legislation that the legislature has joined and enacted. See supra notes 65-66 and accompanying text.
111. Kleczka, 82 Wis. 2d at 711, 264 N.W.2d at 553.
112. Id. at 712, 264 N.W.2d at 553. Kleczka stated that earlier Wisconsin Supreme Court dicta concerning the inseverable nature of provisos or conditions on appropriations represented ill-considered statements offered to appease disappointed litigants. Id. at 713, 264 N.W.2d at 554.
113. Id. at 715, 264 N.W.2d at 555. In previous cases, the Wisconsin Supreme Court implied that the governor's partial veto powers did not include the power to sever provisos or conditions attached to appropriations. In a contrary ruling, Kleczka abandoned the last limitation upon the governor’s veto powers. Under Kleczka, the only test of partial veto validity and the only limitation on the partial veto power is that the approved portions of the bill constitute a complete and workable law. Id.
114. Id. at 716, 264 N.W.2d at 555 (Hansen, J., concurring in part and dissenting in part).
115. Id. at 719, 264 N.W.2d at 557. Justice Hansen addressed the separation of powers concern by stating that:

Only the limitations on one's imagination fix the outer limits of the exercise of the partial veto power by incision or deletion by a creative person. At some point this creative negative constitutes the enacting of legislation by one person, and at precisely that point the governor invades the exclusive power of the legislature to make laws.

Id. at 720, 264 N.W.2d at 557.
create new bills that will become law unless they are disapproved by two-thirds of the state legislators.\textsuperscript{116}

Justice Hansen suspected that the majority was hesitant to place subjective tests upon the powers of the partial veto:

The majority is rightfully wary of the elusive tests enunciated in some other jurisdictions. To hold that the exercise of the partial veto power may not have an "affirmative," "positive" or "creative" effect on legislation, or that the veto may not change the "meaning" or "policy" of a bill, as some courts elsewhere have done, would be to involve this court in disingenuous semantic games.\textsuperscript{117}

Without an objective point of reference, the court would have to decide cases upon the "subjective assessment of the respective policies espoused by the legislature and the executive, an unseemly result which would foster uncertainty in the legislative process."\textsuperscript{118} Justice Hansen pointed out that by utilizing subjective criteria for judging the validity of the governor's partial veto, the court would, in effect, assume the function of the legislature.\textsuperscript{119}

Thus, the justice concluded that the court "steadily fashioned" an objective standard to decide the validity of a partial veto.\textsuperscript{120}

Justice Hansen expressed concern over the court's desertion of the never-applied inseverability of conditions and provisos exception to the partial veto power.\textsuperscript{121} This step, the justice argued, is required because when a court "holds that a governor may freely alter the evident intent or policy of the legislature, it is no doubt consistent to permit him to remove conditions and contingencies, which, after all, are no more than manifestations of legislative policy or intent."\textsuperscript{122} Even so, Justice Hansen was unable to find language in article V, section 10 supporting such a broad interpretation of the partial veto power.\textsuperscript{123}

Consequently, Justice Hansen argued that the complete and workable law test gave the governor virtually unlimited partial veto powers, and that "[i]t is difficult to envisage a governor deliberately exercising the partial

\begin{itemize}
  \item[116.] \textit{Id.}
  \item[117.] \textit{Id.} at 721, 264 N.W.2d at 557.
  \item[118.] \textit{Id.}
  \item[119.] \textit{Id.} at 721, 264 N.W.2d at 558.
  \item[120.] \textit{Id.} \textit{See generally} Harrington, \textit{supra} note 4 (discussing objective test as an attractive alternative to subjective tests fashioned in many other jurisdictions).
  \item[121.] Kleczka, 82 Wis. 2d at 722, 264 N.W.2d at 558.
  \item[122.] \textit{Id.}
  \item[123.] \textit{Id.} Justice Hansen seemed to imply that the principle of separation of powers demanded that any constitutional authorization of the governor's partial veto powers be narrowly construed against intrusion.
veto power so as to produce a fragmentary or unworkable law." In addition, he stated that the "standard adopted by the court poses no obstacles to the use of deletions to produce a complete, entire, and workable bill concerning a subject utterly unrelated to that of the bill as passed by the legislature." Justice Hansen was unable to identify an obstacle, even implicit, to the abuse of the veto power, and he feared that the court "may now have painted itself into a corner, and that a time may come when we regret having done so." However, Justice Hansen pointed out that the original purposes of the partial veto power and language from the court's earlier decisions could provide an alternative solution. "The governor's power to dismantle an appropriations bill was made as extensive as the legislature's power to construct such a bill from independent proposals capable of separate enactment." According to Justice Hansen, Henry intended the partial veto power to be as "coextensive as the legislature's power to join and enact separable pieces of legislation in an appropriation bill." Therefore, he deduced, the partial veto power conferred upon the governor is "not a power to reduce a bill to its single phrases, words, letters, digits and punctuation marks." Justice Hansen proposed that the appropriate test of severability should be that both the approved remnants and the portions stricken must be able to stand as "complete and workable laws." The adoption of this test, asserted Justice Hansen, would "define the limits of the constitutional role of the governor." In addition, the governor's exercise of the partial veto would be limited to portions of an appropriation bill that were "grammatically and structurally distinct." Furthermore, this objective standard would be capable of clear and predictable application; thus the court would not be required to render decisions based on subjective criteria. Most important, he stated that "this approach would protect the prerogatives reserved to the legislature by the constitution and would fulfill the responsibility of this court to determine

124. Id. at 723, 264 N.W.2d at 558.
125. Id. at 723, 264 N.W.2d at 559.
126. Id. at 724, 264 N.W.2d at 559.
127. Id.
128. Id. at 724-25, 264 N.W.2d at 559-60.
129. Id. (citing State ex rel. Wisconsin Tel. Co. v. Henry, 218 Wis. 302, 315, 260 N.W. 486, 492 (1935)).
130. Id. at 726, 264 N.W.2d at 560.
131. Id.
132. Id.
133. Id.
134. Id. at 727, 264 N.W.2d at 560.
when the exclusive territory of one of our independent branches has been invaded by another."  

In closing, Justice Hansen stated that "we have now arrived at a stage where one person can design his own legislation from the appropriation bills submitted to him after they have been approved by the majority of the legislature." The "laws thus designed by one person become the law of the sovereign State of Wisconsin unless disapproved by two-thirds of the legislators." The justice ended his dissent by firmly proclaiming that he was "not persuaded that [article V, section 10] was ever intended to produce such a result."

E. State ex rel. Wisconsin Senate v. Thompson: A Severed Court

A decade after Kleczka, the Joint Committee on Legislative Organization submitted the question of whether article V, section 10 granted Governor Thompson the power to veto individual words, letters, and digits. The Wisconsin Supreme Court, in a 4-3 decision, upheld Governor Thompson's partial vetoes in State ex rel. Wisconsin Senate v. Thompson. The majority opinion, written by Chief Justice Heffernan, held that "the governor may, in the exercise of the partial veto authority over appropriation bills, veto individual words, letters and digits, and also may reduce appropriations by striking digits, as long as what remains after veto is a complete, entire, and workable law." In addition, the court for the first time explicitly recognized "that the consequences of any partial veto must be a law that is germane to the topic or subject matter of the vetoed provisions."

Wisconsin Senate synthesized three general principles from the cases of Henry, Finnegan, Martin, Sundby, and Kleczka. First, the Wisconsin

135. Id.
136. Id.
137. Id.
138. Id.
139. The Joint Committee on Legislative Organization is a permanent joint legislative committee of 10 members: the president of the Senate; the speaker of the Assembly; and the majority, minority, assistant majority, and assistant minority leaders of both houses. BLUE BOOK, supra note 15, at 287.
140. State ex rel. Wisconsin Senate v. Thompson, 144 Wis. 2d 429, 434, 424 N.W.2d 385, 386 (1988).
141. Id. at 437, 424 N.W.2d at 387-88.
142. Id. at 437, 424 N.W.2d at 388.
143. Id. One commentator discussed the "germaneness" requirement: "The germaneness limitation recognized by the Wisconsin Senate majority imposes an amorphous limit on gubernatorial partial veto authority. . . . Thus, future litigation attempting to define the limits of the germaneness requirement can be anticipated." Burke, supra note 4, at 1419-20.
144. Wisconsin Senate, 144 Wis. 2d at 450-51, 424 N.W.2d at 393.
partial veto was uniquely broad to permit Wisconsin governors to flexibly deal with omnibus appropriation bills. 145 Second, conditions and provisos attached to appropriations could be severed by partial veto. 146 Third, positive or negative changes in the legislature’s policy did not invalidate a partial veto. 147

*Wisconsin Senate* radically departed from the policy reasons underlying the partial veto developed and relied upon in *Martin, Sundby*, and *Kleczka*. “It is interesting that the *Martin* Court identified anti-logrolling as the purpose of the constitutional amendment giving the Wisconsin governor a partial veto power . . . .” 148 Rather, the purpose behind the partial veto was “to make it easier for the governor to exercise what this court has recognized to be his ‘quasi-legislative’ role, and to be a pivotal part of the ‘omnibus’ budget bill process.” 149

According to the majority in *Wisconsin Senate*, the grant of the partial veto power to the governor “was aimed at achieving joint exercise of legislative authority by the governor and the legislature over appropriation bills.” 150 In conclusion, Chief Justice Heffernan stated “that this case makes no new law. Instead, we simply affirm our prior opinions which have placed Wisconsin in the singular position of having the most liberal and elastic constitutional provision—adopted almost 60 years ago—regarding the governor’s partial veto authority over appropriation bills.” 151

A vigorous dissent written by Justice William Bablitch and joined by Justices Shirley Abrahamson and Donald Steinmetz disagreed with the majority opinion, which allowed the veto of individual letters. 152 Justice Bablitch argued that an interpretation of article V, section 10 that allows the governor to create legislation through the use of the partial veto “strained

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145. *Id.*
146. *Id.*
147. *Id.*
148. *Id.* at 445, 424 N.W.2d at 391.
149. *Id.* at 446, 424 N.W.2d at 391.
150. *Id.* at 454, 424 N.W.2d at 395. The majority’s statement that the partial veto was aimed at achieving a joint exercise of the legislative power over appropriations strains the concept of coextensive powers. *Henry* explicitly stated that the governor’s power to separate was coextensive with the power of the legislature to combine separate pieces of legislation. State ex rel. Wisconsin Tel. Co. v. Henry, 218 Wis. 302, 315, 260 N.W. 486, 492 (1935).
151. *Wisconsin Senate*, 144 Wis. 2d at 463, 424 N.W.2d at 398. In so stating, Chief Justice Heffernan evidences a pride in Wisconsin’s liberal and flexible constitutional amendment. However, Judge Richard Posner, sitting on the U.S. Court of Appeals for the Seventh Circuit, stated that the Wisconsin governor’s legislative power emanating from the partial veto was “unusual” and even “quirky.” Risser v. Thompson, 930 F.2d 549, 554 (7th Cir. 1991).
152. *Wisconsin Senate*, 144 Wis. 2d at 466-75, 424 N.W.2d at 399-403 (Bablitch, J., dissenting in part and concurring in part).
the English language beyond the breaking point."153 In addition, Justice Bablitch commented that allowing the governor to delete individual letters could not have been the intent of the drafters of article V, section 10 or the voters who approved it.154 According to Justice Bablitch, the legislative history of the 1930 amendment indicated that prevention of logrolling was the intent of the drafters, and the power to veto individual letters was not required to accomplish that purpose.155

Voicing his separation of powers concerns, Justice Bablitch declared that by granting the governor the power to enact new legislation from an array of letters, "this court has given the governor extraordinary legislative power surpassing even that of the legislature."156 Under the power given to the governor in the majority opinion, the governor can create new words and new law by partial veto with the acquiescence of one-third plus one member of either house of the legislature.157 Thus, argued Justice Bablitch, the majority's opinion allowed the governor to independently legislate, checked only by the unlikely possibility of a veto override.158 Therefore, Justice Bablitch argued for the adoption of the Kleczka standard, which permitted the veto of whole words.159 The dissent also sanctioned the partial veto of digits, reasoning that the partial vetoes of digits, unlike letter vetoes, could not create new legislation.160

Notwithstanding Justice Bablitch's dissent, Wisconsin Senate allows the governor to veto any part of an appropriation bill as long as what remains after the veto is a complete, entire, and workable law. The governor may also delete individual words, eliminate digits, and reduce the amounts of appropriations in a budget bill. Guided by these standards, the governor may even change legislative intent and policy. Additionally, the court held that the consequences of any partial veto must be a law that is germane to the topic or subject matter of the vetoed provisions.

153. Id. at 466, 424 N.W.2d at 400 (Bablitch, J., dissenting in part and concurring in part).
154. Id. (Bablitch, J., dissenting in part and concurring in part)
155. Id. at 468, 424 N.W.2d at 400 (Bablitch, J., dissenting in part and concurring in part).
156. Id. at 471, 424 N.W.2d at 402 (Bablitch, J., dissenting in part and concurring in part).
157. Id. (Bablitch, J., dissenting in part and concurring in part). For example, acquiescence of 12 of the 33 state senators to the governor's partial veto ensures that the parts approved by the governor become law. The Wisconsin Constitution requires the votes of two-thirds of the members of both legislative houses to override a governor's veto. Wis. Const. art. V, § 100.
158. Wisconsin Senate, 144 Wis. 2d at 471, 424 N.W.2d at 402.
159. Id.
160. Id. at 474, 424 N.W.2d at 403.
F. Aftermath of State ex rel. Wisconsin Senate v. Thompson

The elimination of any and all obstacles to the governor's partial veto powers by Wisconsin Senate led to the adoption of an amendment to the Wisconsin Constitution.\textsuperscript{161} The amendment provided that a governor may not veto individual letters in the words of an enrolled bill in order to create new words.\textsuperscript{162} Although the amendment only limited the governor's unique veto to words, Democratic legislators agreed that the "stop-gap" constitutional amendment was needed to address the problems created by the partial veto.\textsuperscript{163} In a strong show of support, Wisconsin citizens ratified the constitutional amendment, sending a message to the government of Wisconsin that they also were unhappy with the lack of limitations placed upon the governor's partial veto authority.\textsuperscript{164}

V. Conclusion

Wisconsin Senate held that the governor of Wisconsin possesses legislative powers as coextensive as that of the legislature.\textsuperscript{165} However, the historical interpretation of the partial veto supports Henry's conclusion that the governor's coextensive power of partial veto only enables the governor to pass on each separable piece of legislation contained within an omnibus appropriation bill.\textsuperscript{166}

In addition, Henry discussed the implications of legislative intent as a factor in deciding partial veto validity.\textsuperscript{167} However, Martin disregarded the discussion in Henry of legislative intent based on questionable rationale that may indicate the court's hidden policy decision to steer clear of subjective considerations concerning tests of partial veto validity.\textsuperscript{168} The court probably avoided subjective considerations for three reasons: (1) a subjective test for partial veto validity would foster uncertainty in the legislative process; (2) subjective tests would place the court between the executive and the legislature, with the court assuming legislative powers; and (3) a subjective test would involve the courts every time a partial veto dispute arose.\textsuperscript{169}

\textsuperscript{161} S.J. Res. 71, 1987-88 Wis. Legis. (1988).
\textsuperscript{162} Id.
\textsuperscript{163} Burke, supra note 4, at 1425-27 (stating that partisan conflicts prevented the legislature from fully confronting the problems created by the partial veto).
\textsuperscript{164} Approximately 62% of Wisconsin voters ratified the amendment. Joe Beck, Referendum on Veto Leads to Ward Passage, Wis. St. J., Apr. 4, 1990, at 3A.
\textsuperscript{165} See supra notes 148-51 and accompanying text.
\textsuperscript{166} See supra notes 26-38, 64-66 and accompanying text.
\textsuperscript{167} See supra notes 59-61 and accompanying text.
\textsuperscript{168} See supra notes 80-82, 85 and accompanying text.
\textsuperscript{169} See supra notes 117-20 and accompanying text.
In adopting the complete and workable law test, the Wisconsin Supreme Court abandoned subjective limitations on the governor's partial veto authority. However, the complete and workable law test and the definition of "part" do not provide any limitations on the governor's partial veto powers. By choosing the complete and workable law objective test, the court not only abandoned subjective limitations but all other limitations as well. As a result, the governor of Wisconsin can create legislation and foil the Wisconsin Legislature's intent and policies by deleting words, digits, and punctuation marks. A historical analysis of the partial veto suggests that article V, section 10 was created to provide the governor with additional veto power in order to regain the balance of powers between the governor and the legislature as a result of the adoption of the omnibus appropriation bill. Instead of obtaining equilibrium between the governor and the legislature, the partial veto tipped the balance in favor of the governor.

This Comment argues for the adoption of the Hansen test of partial veto validity. This objective test states that both the approved remnants and the portions stricken must be able to stand as complete and workable laws. The adoption of this test would clearly define the limits of the governor's constitutional role by limiting the governor's exercise of the partial veto to portions of an appropriation bill that are grammatically and structurally distinct. The court would possess an objective standard capable of clear and predictable application and would not be required to render decisions based on subjective criteria. Finally, the Hansen test would quell the legislative use of a creative veto pen and emphasize the point that legislative power properly resides in the hands of the Wisconsin Legislature.

JOHN S. WEITZER

170. See supra notes 49, 124 and accompanying text.
171. See supra notes 26-38 and accompanying text.