The Propriety of the Negative: the Governor's Partial Veto Authority

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The propensity of the legislative department to intrude upon the rights, and to absorb the powers, of the other departments, has been already more than once suggested; the insufficiency of a mere parchment delineation of the boundaries of each, has also been remarked upon; and the necessity of furnishing each with constitutional arms, for its own defense, has been inferred and proved. From these clear and indubitable principles, results the propriety of a negative, either absolute or qualified, in the executive upon the acts of the legislative branch.¹

— Alexander Hamilton

On February 3, 1976, the Wisconsin Supreme Court decided State ex rel. Sundby v. Adamany² and reaffirmed the broad authority of the governor to object to parts of appropriation bills under the Wisconsin Constitution.³ The court’s opinion in Sundby is important not only as an illustration of the extent of the executive’s veto authority under the Wisconsin Constitution, but also for the court’s promulgation of an objective test to determine the constitutionality of the exercise of that authority. Under this objective test, it is clear that the Wisconsin governor may object to parts of an appropriation bill if the remaining parts “constitute a complete workable law.” The court’s analysis in Sundby is significant in that it may serve to influence state courts which construe constitutional veto provisions similar to Wisconsin’s to adopt the objective test. This objective test in Sundby is an attractive alternative to the subjective test formulated in many other jurisdictions.

The governor’s authority to veto particular bills of the legislature is based upon sound principles of constitutional law. A

¹. The Federalist No. 73 (A. Hamilton).
². 71 Wis. 2d 118, 237 N.W.2d 910 (1975).
thorough understanding of these constitutional principles will underscore the significance of the court’s analysis in Sundby. In addition, a comparison of the development of the governor’s veto authority in other jurisdictions is useful as an illustration of the broad authority afforded the governor by the provisions of the Wisconsin Constitution. This broad authority embodied in the provisions of the Wisconsin Constitution is a result of an unswerving line of judicial precedent in Wisconsin, culminating in the court’s opinion in Sundby, which has expanded the governor’s veto authority in Wisconsin.

I. EXECUTIVE’S VETO AUTHORITY — A CONSTITUTIONAL PRINCIPLE

The development of the executive veto in the federal experiment was an outgrowth of the colonial experience in America. The colonization of America by the English was accompanied by the imposition of the veto authority into the mainstream of government in two respects. First, the king retained the authority to repeal legislation enacted by the colonies. Second, each colonial governor was imbued with authority to veto legislation passed by the colony’s representative assembly. The disputes that resulted over the exercise of the king’s repealing authority and the colonial governors’ veto authority were a constant source of irritation. It was this dispute which provided an impetus to the American Revolution.

As a result of the colonies’ disenchantment with the veto authority under the rule of the English, it is not surprising that the majority of the thirteen original states did not afford the governors with any substantial control over the legislatures when the first Federal Convention was convened in 1787. Most state constitutions did not provide the governor with the power to veto legislation. New York was the first state to reach a compromise between a faction which was opposed to the exer-

4. The veto power of the king over legislation passed by the Parliament was the source of much irritation in English history. The exercise of this royal authority was one of the powers contested by the Long Parliament in 1642. In that year, the Long Parliament asserted the authority to enact legislation without the approval of the king. It was this source of agitation that led Charles II, subsequent to his restoration to the throne, to declare that all prior law enacted by the Commonwealth was null and void. Luce, Legislative Problems 140-41 (1935).
5. Id. at 141.
6. Id. at 151-52.
7. Id. at 145.
exercise of the executive's veto authority and the pragmatists who argued that such a power was necessary for an effective check on the exercise of uncontrolled authority by the legislature. New York delegated the veto authority to a council which was comprised of representatives from the executive and judicial branches.8

An early example of the veto power placed exclusively in the confines of the executive branch was the Massachusetts model.9 This model found a strong spokesperson in Alexander Hamilton in Federalist No. 73.10 Hamilton expressed an overriding concern for the tendency of the legislature to encroach upon the powers of the executive branch in the absence of an effective check.11 In addition, Hamilton viewed the executive

8. The New York Constitution as drafted by John Jay in 1777 created a Council of Revision which consisted of a governor, the judges of the Supreme Court, and the Chancellor. Bills passed by the New York legislature were submitted to this council. If the council returned a bill within ten days of passage, two-thirds of the legislature was required to approve the bill in order for it to become a law in the State of New York. Id. at 145.

9. The first proposal for a constitution in Massachusetts was rejected by the populace in that state in 1778 since the governor was a mere figurehead without effective veto authority. In the 1778 proposal, the governor and lieutenant governor of the State of Massachusetts were provided the same votes for legislation as other members of the state senate. In 1780, the Massachusetts' populace approved the proposed constitution which endowed the executive with the exclusive veto power similar to contemporary provisions in most state constitutions. Id. at 149.

10. The Federalist No. 73, at 340 (Howell ed. 1852) (A. Hamilton) states as follows:

I have in another place remarked, that the convention in the formation of this part of their plan, had departed from the model of the constitution of this state [New York], in favor of that of Massachusetts. Two strong reasons may be imagined for this preference; that the judges who are to be the interpreters of the law, might receive an improper bias, from having given a previous opinion in their revisionary capacity; the other, that by being often associated with the execution, they might be induced to embark too far in the political views of that magistrate, and thus a dangerous combination might by degrees be cemented between the executive and judiciary departments. It is impossible to keep the judges too distant from every other avocation than that to expounding the laws. It is peculiarly dangerous to place them in a situation to be either corrupted or influenced by the executive.

11. The propensity of the legislative department to intrude upon the rights, and to absorb the powers, of the other departments, has been already more than once suggested; the insufficiency of a mere parchment delineation of the boundaries of each, has also been remarked upon; and the necessity of furnishing each with constitutional aims for its own defense, has been inferred and proved. From these clear and indubitable principles, results the propriety of a negative, either absolute or qualified, in the executive, upon the acts of the legislative branches. Without the one or the other, the former would be absolutely unable to defend himself against the depredations of the latter. He might gradually be stripped
veto authority as a mechanism to insulate the populace from the enactment of expedient legislation by the popular assembly.\textsuperscript{12} It is these basic philosophies which underlie the grant of veto authority to the President in the United States Constitution\textsuperscript{13} and to various executives in their respective state constitutions.

II. VETO AUTHORITY IN OTHER JURISDICTIONS

There is great variation in the executive veto provisions contained in state constitutions. Consequently, one should be cautioned against making any generalizations based upon decisions in one jurisdiction in interpreting constitutional provisions involving the governor’s veto authority in another jurisdiction.\textsuperscript{14} However, a survey of decisions in other jurisdictions of his authorities by successive resolutions, or annihilated by a single vote. And in the one mode or the other, the legislative and executive powers might speedily come to be blended in the same hands. If even no propensity had ever discovered itself in the legislative body, to invade the rights of the executive, the rules of just reasoning and theoretic propriety would of themselves teach us, that the one ought not to be left at the mercy of the other, but ought to possess a constitutional and effectual power of self defense.

\textit{Id.} at 337.

12. But the power in question has a further use. It not only serves as a shield to the executive, but it furnishes an additional security against the enactment of improper laws. It establishes a salutary check upon the legislative body, calculated to guard the community against the effects of faction, precipitance, or of any impulse unfriendly to the public good, which may happen to influence a majority of that body.

\textit{Id.} at 337.

13. U.S. Const. art. I, § 7, provides in relevant part as follows:

Every bill which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the president of the United States; 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 on their journal, and proceed to reconsider it. If after such reconsideration two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law.

14. Similarity of language in various state constitutions does not provide a valid basis for applying case law in one state as an aid in construing the provisions contained in another state constitution. The scope of executive veto authority is a constitutional principle which depends on a host of factors not limited to the appearance of similar language in one state constitution. The Supreme Court of Arizona expressed concern for relying on case law from other jurisdictions for the purpose of construing similar language appearing in another state’s constitution:

[T]here are but few decisions on such constitutional provisions, and among these we find considerable difference, both in reasoning and conclusions. Attempts are generally made to base the decision on the precise language of the particular Constitution construed, but a careful examination of the reasoning
has revealed a number of common issues confronted by their respective courts. A brief summary of the resolution of these issues in other states serves to underscore the utility of the objective test adopted by the court in *Sundby*. In addition, an analysis of these decisions illustrates that the Wisconsin governor's veto authority as interpreted by the court in *Sundby* is much broader than that provided in the majority of state constitutions.

The more restrictive view of the governor's veto authority taken by the courts in other jurisdictions can be explained by the following factors: (1) the influence of judicial notions of separation of powers; and (2) the emphasis placed on particular language in state constitutions as a controlling factor in defining the limits of the executive veto authority.

### A. The Separation of Powers Analysis

The analysis adopted by many jurisdictions for defining the scope of the executive's partial veto power is premised upon judicial notions of the separation of powers doctrine in the respective states. Under this analysis, any exercise of the partial veto which is tantamount to legislation is unconstitutional since it encroaches upon the power of the legislative branch. This approach is unsatisfactory since it is premised upon judicial notions of the parameters of the legislative and executive functions which are necessarily subjective in nature. Essentially, if the exercise of the veto authority has an "affirmative" effect on legislation, this analysis dictates that the exercise of the veto by the governor is unconstitutional. It is submitted that any exercise of the governor's veto power may have an "affirmative" effect since it necessarily changes the intent of the legislature. Under this analysis, the governor is precluded from exercising his veto power if the effect would be tantamount to enacting new legislation. The necessary result is that the governor does not possess any legislative power. This analysis is also noteworthy for its failure to provide an objective test for defining the scope of the veto authority which may serve as

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*Fairfield v. Foster, 25 Ariz. 146, 150-51, 214 P. 319, 321 (1923). See also State v. Baynard, 203 La. 711, 15 So. 2d 649 (1943); Fergus v. Russel, 270 Ill. 304, 110 N.E. 130 (1915); State v. Forsyth, 21 Wyo. 359, 133 P. 521 (1913).*
a guide for a governor in the exercise of this important power. The inadequacy of this analysis is apparent upon a careful scrutiny of decisions in jurisdictions adopting it.

In a recent challenge to the governor's partial veto authority under New Mexico's Constitution, the supreme court of that state reaffirmed the application of this negative rule in the following terms:

The power of partial veto is the power to disapprove. This is a negative power, or a power to delete or destroy a part or item, and is not a positive power, or a power to alter, enlarge or increase the effect of the remaining parts or items. It is not the power to enact or create new legislation by selective deletions.

The courts' concern in a number of jurisdictions that the governor's selective use of the veto authority could have the effect of changing the legislature's intent in a bill submitted for executive approval is founded upon the judicially perceived need to separate the powers of the legislative branch from those of the executive branch.

One of the more recent restatements of this concept is contained in the Connecticut Supreme Court opinion in Caldwell v. Meskill. The bill affected in Caldwell related to highways and highway aids. The governor vetoed the statement of legislative purpose in the bill and a provision relating to the powers

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15. The New Mexico Constitution contains the following provision relating to the governor's partial veto authority:

The governor may in like manner approve or disapprove any part or parts, item or items, of any bill appropriating money, and such parts or items approved shall become a law, and such as are disapproved shall be void unless passed over his veto, as herein provided.

N.M. Const. art. IV, § 22.


17. The important role of the separation of powers doctrine in the negative analysis relating to the governor's partial veto power is evident in Patterson v. Dempsey, 152 Conn. 431, ..., 207 A.2d 739, 746 (1965) wherein the court stated:

[The fundamental reason why a partial disapproval or veto is not generally authorized, at least in the case of general legislation, is because of the separation of powers among the executive, legislative and judicial branches of the government. All affirmative legislative powers are given exclusively to the General Assembly.

of the Connecticut commissioner of transportation. The Connecticut Constitution confers power upon the governor to approve any item or items of any bill making appropriation of money embracing distinct items while at the same time approving the remainder of the bill . . . ”19 The court followed its earlier decision20 wherein it held that the governor’s veto authority did not include the power to change the legislative intent in a bill:

Although there is authority in other jurisdictions to the contrary, we see no reason to reverse the clear holding of the Patterson case. The court recognized that to some extent such a holding circumscribes the authority of the governor, but ‘[i]f the governor were allowed to disapprove or veto parts of a bill involving general legislation, he could, in the case of many if not most such bills, by the exercise of that power, eliminate selected portions of a bill in such a manner as to change its meaning and thereby, in effect, enact an entirely different bill. This would usurp the legislative function, which is committed to the General Assembly alone.21

This negative concept was also relied on in a recent decision rendered by the Iowa Supreme Court in Welden v. Ray.22 In Welden, the Iowa governor attempted to veto express conditions, limitations and contingencies contained in the legislature’s appropriation bill. The Iowa Constitution empowers the governor to “approve appropriation bills in whole or in part, and [the governor] may disapprove any item of an appropriation bill.”23 The Iowa Supreme Court concluded that such vetoes were invalid since they had the effect of encroaching upon the power of the legislature; that the appropriation of money was essentially a legislative function with the power to specify how the money would be spent inherent in that legislative power. The court then quoted the New Mexico court:

19. CONN. CONST. art. IV, § 16.
20. Patterson v. Dempsey, 152 Conn. 431, 207 A.2d 739 (1965). In Patterson, the Connecticut Supreme Court indicated that the governor does not have the power to change the legislature’s intent embodied in its bills:

    If the governor were allowed to disapprove or veto parts of a bill involving general legislation, he could, in the case of many if not most such bills, by the exercise of that power, eliminate selected portions of a bill in such a manner as to change its meaning and thereby, in effect, enact an entirely different bill.

    Id. at ___, 207 A.2d at 746.
22. ___. IA. ___, 229 N.W.2d 706 (1975).
23. IOWA CONST. art. III, § 1.
We have heretofore held that the Legislature has the power to affix reasonable provisions, conditions or limitations upon appropriations and upon the expenditure of the funds appropriated. The Governor may not distort, frustrate or defeat the legislative purpose by a veto of proper legislative conditions, restrictions, limitations or contingencies placed upon an appropriation and permit the appropriation to stand. He would thereby create new law, and this power is vested in the Legislature and not in the Governor.24

This concern for a separation of powers between the executive and legislative branches has encouraged many courts to adopt a strict construction of the partial veto provision contained in their respective state constitutions.25 These courts have strictly construed these constitutional provisions by limiting the governor’s exercise of his veto authority to specific monetary items contained in appropriation bills.26

The application of the negative analysis has caused a great deal of uncertainty for governors in the exercise of their veto authority. Under this analysis, the governor must decide if deletions will only have a “negative” effect on the proposed legislation. It is submitted that every exercise of a partial veto may have a negative or affirmative effect depending upon one’s


25. See In re Opinion of the Justices, 294 Mass. 616, 2 N.E.2d 789 (1936). In Brown v. Morris, 365 Mo. 946, ___, 290 S.W.2d 160, 168 (1956), the court stated:
The veto power of the executive should not be construed to restrict the power of the general assembly or the people unless such intent clearly appears (citations omitted). The authority of an executive to set aside an enactment of the legislative department is an inherent power, and can be exercised only when sanctioned by a constitutional provision and only in the manner and mode prescribed. The executive’s veto power is a power conditionally to prevent legislation, but is not the power to enact new laws or to recall or modify old laws. The veto power is in derogation of the general plan of the state government, and provisions authorizing it must be strictly construed, so as to limit its exercise to the powers expressly enumerated or necessarily implied.

26. Article 63, § 5, of the Massachusetts Constitution provides that “The governor may disapprove or reduce items or parts of items in any bill appropriating money.” The supreme court of Massachusetts strictly construed this provision as follows:
Power is conferred upon the Governor to reduce a sum of money appropriated, or to disapprove the appropriation entirely. No power is conferred to change the items of an appropriation except by reducing the amount thereof. Words or phrases are not items or parts of items.

perspective of the proper role of the governor vis-a-vis the legislature under the separation of powers doctrine. It is precisely the uncertainty caused by the adoption of a semantic test which has made the negative analysis less than satisfactory for determining the validity of the exercise of a governor’s partial veto authority under various state constitutional provisions.

B. State Constitutions — Variations of Veto Authority

A governor’s constitutional authority to partially veto bills passed by the state legislature may be analyzed as falling within one of two categories. In the first category, a governor’s authority is limited to “items of appropriations bills.” A state which has a constitutional provision in this category limits the governor’s partial veto authority to specific monetary items contained in appropriation bills. In this category, the governor may strike out specific monetary amounts without changing the legislative intent which accompanies such appropriations. However, the governor is precluded from selectively deleting non-monetary clauses contained in appropriation bills.

The Missouri Supreme Court emphasized this point in its opinion in State ex rel. Cason v. Bond. In Cason the Missouri governor vetoed language relating to the legislative purpose in a number of provisions contained in an emergency appropriation bill. The Missouri Constitution allows the governor to “object to one or more items or portions of items of appropriation of money.” The court concluded that the governor’s veto was invalid since his constitutional authority did not encompass a veto applied to non-monetary clauses in an appropria-


28. For example, the Connecticut State Constitution provides in relevant part as follows: “The governor shall have power to disapprove of any item or items of any bill making appropriations of money embracing distinct items while at that same time approving the remainder of the bill . . . .” Conn. Const. art. IV, § 15.

29. In this regard, the United States Supreme Court stated: “An item of an appropriation bill obviously means an item which in itself is a specific appropriation of money, not some general provision of law which happens to be put into an appropriation bill. Bengzon v. Secretary of Justice, 299 U.S. 410, 414 (1937).


30. 495 S.W.2d 389 (Mo. 1973).

tion bill: "We hold that 'item' as used in Art. IV, sec. 26, refers to a separable sum of money appropriated. It does not refer separately to words, phrases or sentences which express purposes or conditions with reference to the appropriation made . . . ." 32

The second category of partial veto provisions consists of those which afford the governor the authority to object to sections or parts of appropriation bills. State courts with constitutional provisions in the second category have held that the governor has a more extensive authority to object partially to provisions contained in appropriation bills. Essentially, the governor is permitted to object to independent "sections or parts" of the appropriation bills regardless of the presence of specific monetary appropriations in these sections or parts.

As an illustration of a constitutional provision in this category, the Washington State Constitution provides in relevant part as follows: "If any bill presented to the governor contains several sections or items, he may object to one or more sections or items while approving other portions of the bill." 33

The Washington Supreme Court in Cascade Telephone Co. v. State Tax Commission 34 construed the word "sections" in this provision to mean any "subject matter" in an appropriation bill which is independent from the remaining portions of the bill. In Cascade, the court upheld the governor's veto of a section in an appropriation bill since the veto "did not modify or limit in any way or in any degree the preceding provisions, but . . . [constituted] a new separate, distinct and . . . independent provision . . . ." 35

An issue of some importance which has developed in a number of jurisdictions concerns the ability of the governor to object partially to conditions contained in appropriation bills.

32. 495 S.W.2d at 392. See also State ex rel. Sego v. Kirkpatrick, 86 N.M. 359, 524 P.2d 975 (1974).
34. 176 Wash. 616, 30 P.2d 976 (1934).
35. Id. at 619-20, 30 P.2d at 977. In Wisconsin, the supreme court has upheld the authority of the governor to veto provisions in an appropriation bill which do not contain specific monetary items:

It follows that, in approving those parts of the Bill, which now constitute ch. 15, Laws of 1935, and in disapproving the other parts of the bill which were not essential, integral, and interdependent parts of those which were approved the governor was acting entirely within his constitutional prerogative under sec. 10, art. V, Wisconsin Constitution.

With regard to the two categories of partial veto states, courts in the first category have uniformly held that a governor is precluded from vetoing conditions contained in appropriation bills. The courts have held that the effect of such action would change the legislative intent and encroach upon the power of the legislature. However, there is some authority from jurisdictions in the second category which permits the governor to object to conditions contained in an appropriation if such conditions are not inseparably related to specific appropriations.

A comparison between the analysis utilized in other jurisdictions and the analysis adopted in Wisconsin will serve to illustrate the broad authority conferred on the Wisconsin governor under the objective analysis adopted by the Wisconsin Supreme Court in State ex rel. Sundby v. Adamany. In addition, the Sundby analysis serves as an attractive alternative to the “negative” analysis formulated in many jurisdictions. The analysis delineated in Sundby evolved from an expansive interpretation of the governor’s veto power by the Wisconsin court subsequent to the adoption of the partial veto provision in the Wisconsin Constitution.

III. WISCONSIN BACKGROUND — PARTIAL VETO AUTHORITY

A. 1930 Amendment

The original Wisconsin Constitution adopted in 1848 did not invest the governor with a partial veto authority. The

36. In State ex rel. Sego v. Kirkpatrick, 86 N.M. 350, 524 P.2d 975 (1974), the court stated:

The Governor may not distort, frustrate or defeat the legislative purpose by a veto of proper legislative conditions, restrictions, limitations or contingencies placed upon an appropriation and permit the appropriation to stand. He would thereby create new law, and this power is vested in the Legislature and not in the Governor.


38. Wis. Const. art. V, § 10 (1848):

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. If, after such reconsideration, two-thirds of the members present shall
governor’s authority was limited to a general veto authority analogous to that possessed by the President in the United States Constitution. However, as early as 1913, Governor Francis E. McGovern noted that the legislature’s practice of combining diverse subjects of legislation in one “appropriation bill” and the lack of the partial veto authority required him to approve such “omnibus” appropriation bills in total even though he objected to certain subjects of legislation contained therein. According to Governor McGovern, this lack of a partial veto authority for the governor in the Wisconsin Constitution had the necessary effect of significantly weakening the powers of the executive vis-a-vis the legislature.

agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of the members present, it shall become a law. But in all such cases, the votes of both houses shall be determined by yees and nays, and the names of the members voting for or against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law, unless the legislature shall, by their adjournment, prevent its return; in which case it shall not be a law.

40. In a special message delivered to the legislature by Governor McGovern on August 7, 1913, he stated:

[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. As these bills have come to me during the closing days of this session there are many items in them that meet my approval; a number I should prefer to see reduced in amount; and others I should like to veto altogether if I had the power. But no chance to do this or to separate the good from the bad was given me. . . . 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.

41. {I}t is clear that under 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. 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. . . . Otherwise, he cannot fairly be held responsible for appropriation measures. Under the method of legislation pursued at this session he now has in fact practically nothing to say about what shall go into appropriation bills or be kept out of them. But nothing more deeply concerns the people of the state than the appropriation of public money and the imposition of taxes; and to no state officer do they more quickly and properly turn for explanation when expenditures and taxes are high than to the governor.

Id. at 2.
In 1925, a resolution was introduced in the legislature to expand the governor's veto authority. However, the senate failed to approve the resolution which would have provided the governor with authority to object to "parts of items" in appropriation bills. Subsequent to this early resolution, a constitutional amendment was proposed which expanded the governor's authority to object to "parts of appropriation bills." Governor Philip LaFollette in his campaign for governor in 1930 was one of the more vocal opponents of this amendment claiming that it would centralize too much power with the governor to the exclusion of the legislative branch. However, the Wisconsin voters approved the amendment to the Wisconsin Constitution in 1930. The amendment added the following language to article V, section 10: "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

42. The 1925 Senate Joint Resolution 23 provided in relevant part as follows:

The governor may disapprove or reduce items or parts of items in any bill appropriating money. . . . As to each item disapproved or reduced, he shall transmit to the house in which the bill originated his reasons for such disapproval or reduction, and the procedure as to such items shall then be the same as in the case of a bill disapproved as a whole. In case he shall fail so to transmit his reasons for such disapproval or reduction within six days (Sundays excepted) after the bill shall have been presented to him such items shall have the force of law unless the legislature by adjournment shall prevent such transmission, in which case they shall not be law.

PARTIAL VETO, supra note 40, at 2.

43. The senate vote against adoption was 14 opposed to 9 in favor. A subsequent resolution was introduced in the next session of the legislature which would have endowed the governor with authority to object to parts of appropriation bills. Senator William Titus requested that the Wisconsin Legislative Reference Bureau draft a resolution "to allow the Governor to veto items in appropriation bills." However, there is no record of hearings concerning the use of "part" as opposed to "item" in this resolution. PARTIAL VETO, supra note 40, at 2; see also WISCONSIN LEGISLATIVE REFERENCE LIBRARY, LEGISLATIVE HISTORY AND DRAFTING RECORD OF THE JOINT RESOLUTIONS AMENDING THE CONSTITUTION RELATING TO THE APPROVAL OF BILLS BY THE GOVERNOR (April, 1934).

44. In this regard, Phillip LaFollette stated:

The effect of the amendment is to give the chief executive additional power in the general conduct and control of government. It is another step in the concentration of power in the executive office. . . . The whole tendency of the past two decades has been towards over concentration of authority. The powers of the several states over their own domestic matters have been increasingly undermined and concentrated in Washington. The powers of the legislatures and of congress have been encroached upon by the executive.

PARTIAL VETO, supra note 40, at 2. However, it is interesting to note that after LaFollette became Governor in 1930, he exercised this veto power in a bill which did not involve an appropriation. Id. at 3.
returned in the same manner as provided for other bills."\textsuperscript{46}

The construction of the language "approved in whole or in part" has been the subject of a good deal of controversy in Wisconsin concerning the extent of the governor's authority to object to portions of appropriation bills passed by the state legislature. These controversies have been reflected in a number of court decisions and attorney general opinions which provide the background for the most recent judicial proclamation on this issue in \textit{Sundby v. Adamany}.

\textbf{B. Wisconsin Decisions}

The parameters of the governor's authority under article V, section 10 of the Wisconsin Constitution to object in part to appropriation bills were first delineated in \textit{State ex rel. Wisconsin Telephone Co. v. Henry}.\textsuperscript{47} On April 2, 1935, the Wisconsin Telephone Company initiated an original action in the Supreme Court of Wisconsin and alleged that the governor's objection to parts of Assembly Bill 48\textsuperscript{47} was an unconstitutional exercise of his authority under article V, section 10, of the Wisconsin Constitution. The purpose of Assembly Bill 48 was the appropriation by the state of funds which were necessary for immediate emergency relief. The governor disapproved parts of the bill which did not contain specific appropriations and returned the same to the legislature with his objections.\textsuperscript{48} Wisconsin Telephone claimed that the governor's actions in disapproving parts of the bill were unconstitutional since the governor did not have the authority to approve the appropriation and disapprove a proviso or a condition inseparably connected to the appropriation. In addition, Wisconsin Telephone

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45. \textit{Wis. Const. art. V, § 10.}
46. 218 Wis. 302, 260 N.W. 486 (1935).
47. 1935 Wis. Laws, ch. 15 (Wis. A.B. 48), was entitled "An act to raise revenues for emergency relief purposes, and making appropriations." Secs. 1 and 9 of the bill stated the intent of the legislature in enacting the bill. Secs. 2 through 7 contained the provisions for raising the necessary revenue, and § 8 contained provisions appropriating "from the general fund for relief purposes" the entire receipts of the revenue raised under §§ 2-7; and subsec. 1 of § 8 provided that "[t]he amount herein appropriated for relief purposes shall be allotted and used as provided by law." Subsecs. 3 through 9 were added to the bill by amendment and provided for distribution through an agency thereof created by the bill designated, "The Governor's Outdoor Relief Administration." \textit{Id.} at 307-08, 260 N.W. at 489.
48. The governor approved all the parts of Wis. A.B. 48 except §§ 1 and 9, which declared the legislative intent of the act, and subsec. 3 to 9 of § 8. \textit{Id.} at 308-09, 260 N.W. at 489-90.
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argued that the governor did not have authority to disapprove parts of an appropriation bill which do not contain an appropriation.49

In *Henry*, the court upheld the constitutionality of the governor's exercise of his veto authority. In the context of its opinion, the court developed the following standard which defines the governor's authority to object in part to appropriation bills: (1) the bill must be an appropriation bill,50 (2) the part the governor objects to need not involve an appropriation,51 and (3) the approved portion must constitute a complete, workable law.52

The opinion in *Henry* was also significant in that the court implied that it would not be influenced by the restrictive no-

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49. *Id.* at 309, 260 N.W. at 490.

50. The court stated: "That the Bill is an appropriation bill within the meaning of that term, as used in Sec. 10, Art. V, Wisconsin Constitution, is not questioned." *Id.* at 310, 260 N.W. at 490. The definition of an appropriation bill was discussed by the court in *State ex rel. Finnegan v. Dammann*, 220 Wis. 143, 148, 264 N.W. 622, 624 (1936).

51. The court observed that the word "part" within the meaning of article V, § 10, denotes a broader authority than the authority to veto items granted to governors of most other states. In *Henry*, the court stated as follows:

On the other hand, if, in conferring partial veto power, by the amendment of sec. 10, art. V, Wisconsin constitution, in 1930, it was intended to give the executive such power only in respect to an item or part of an item in an appropriation bill, then why was not some such term as either "item" or "part of an item" embodied in that amendment, as was theretofore done in similar constitutional provisions in so many other states, instead of using the plain and unambiguous terms "part" and "part of the bill objected to," without any words qualifying or limiting the well-known meaning and scope of the word "part?"

As the meaning of that word, as used in sec. 10, art. V, Wisconsin constitution, is not thus qualified or limited, or otherwise rendered doubtful by reason of context, or uncertainty as to application to a particular subject matter, or otherwise, there is nothing because of which that word, as used in that section, is not to be given its usual, customary, and accepted meaning . . .

218 Wis. at 313, 260 N.W. at 491.

52. The court stated:

As that bill is worded, there is not only an entire absence of any expressed provisor or condition, or otherwise expressly stated connection between the parts disapproved and the parts which were approved by the governor, but, on the other hand, 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 in chapter 15, Laws of 1935, constitute, *in and by themselves, a complete, entire, and workable law*, for the appropriation for relief purposes, of the money to be raised, as tax revenues thereunder, and for the allotment and use of that appropriation (excepting as to the relatively small amounts otherwise specifically allotted in subds. (a), (am), (b), (c), of sub. (2) and sub. (2a), of sec. 8), through the agency of the industrial commission . . .

*Id.* at 314, 260 N.W. at 491-92 (emphasis added).
tion of separation of powers so frequently employed by courts in other jurisdictions to invalidate a governor’s exercise of veto authority. The court stated: “[T]here is nothing in that provision [article V, section 10] which warrants the inference or conclusion that the governor’s power was not intended to be as coextensive as the legislature’s power to join and enact separable pieces of legislation in an appropriation bill.”

Finally, the court refused to decide whether a governor in Wisconsin is precluded from objecting to a proviso or condition which is inseparably connected with a specific appropriation in an appropriation bill. In Henry, the court acknowledged that this issue was not presented to it for a resolution on the facts of that case.

The analysis employed by the court in Henry was subsequently reaffirmed in State ex rel. Martin v. Zimmerman. In Zimmerman, the attorney general for the State of Wisconsin challenged the governor’s exercise of his veto authority inobjecting to parts of Senate Bill 563. In upholding the validity of the governor’s exercise of his authority under article V, section 10, the court adopted the analysis formulated in Henry:

> We think it clear that ch. 533, Laws of 1939, which contains all of Bill No. 563S, excepting the parts thereof disapproved by the governor, constitute an effective and enforceable law on fitting subjects for a separate enactment by the legislature. . . . The question here is whether the approved parts, taken as a whole, provide a complete workable law. We have concluded that they do, and we must give them effect as such.

In addition, Zimmerman is significant in that the court recognized that the governor could utilize the partial veto authority under article V, section 10 to effectuate important

53. Id. at 315, 260 N.W. at 492.
54. The court stated:
   In passing upon those contentions, we find it unnecessary to decide in this case whether the governor is empowered to disapprove a proviso or condition in the appropriation bill which is inseparably connected with the appropriation, because, upon analyzing the terms of the bill in question, we have concluded, for reasons hereinafter stated, that the parts which were disapproved by the governor were not provisos or conditions which were inseparably connected to the appropriation.
   Id. at 309, 260 N.W. at 490.
55. 233 Wis. 442, 289 N.W. 662 (1940).
56. Id. at 449-50, 289 N.W. at 665.
changes in legislative policy. The court departs from the strict separation of powers analysis adopted in other jurisdictions in its recognition that the governor has the power to "legislate" through the use of the partial veto in Wisconsin.

Finally, *Zimmerman* is significant in the development of the governor's partial veto authority in Wisconsin in that it reaffirms the policy behind the constitutional grant of that authority to the governor. In effect, the court stated that the purpose of article V, section 10 was to prevent the practice of combining together in one act inconsistent subjects of legislation in order to force the governor to approve the whole act consisting of objectionable portions.

The office of the attorney general as well as the Wisconsin Supreme Court has issued a number of opinions regarding the efficacy of particular exercises of the governor's veto authority. Although these opinions have little precedential value in Wisconsin, they serve to illustrate the scope of the controversy in Wisconsin. The attorney general expressed the opinion that the governor's partial veto authority does not encompass the power to partially disapprove administrative agency orders nor the power to object to parts of separable pieces of legislation contained within an appropriation bill. In addition, the attorney general ruled that the governor does not have the power to

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57. The court stated: "It must be conceded that the governor's partial disapproval did effectuate a change in policy; so did the partial veto of the bill involved in the case of *State ex rel. Wisconsin Telephone Co. v. Henry*, . . . which this court held to be valid." *Id.* at 450, 289 N.W. at 665.

58. In this regard, the court stated:
   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 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.

*Id.* at 447-48, 289 N.W. at 664.

59. In 41 Op. ATT'Y GEN. Wis. 206 (1952) the attorney general held that art. V, § 10 of the Wisconsin Constitution does not afford the governor the power to approve in part and reject in part a state conservation commission order. The attorney general stated that such power is limited to appropriation bills.

60. The attorney general stated that the governor could not strike a single digit in a specific appropriation for highway improvements since such an action would have the effect of altering a separable part of an appropriation bill. In the opinion of the attorney general, the governor's authority is limited to "approve or reject, in whole or in part, appropriation bills." 62 Op. ATT'Y GEN. Wis. 238, 239 (1973).
object to a condition for the appropriation contained in the appropriation bill. 61

However, in other opinions, the attorney general has approved the exercise of the governor's veto of portions of the law relating to compensation of a state agency department's administrators. 62 Also, the attorney general upheld the governor's authority to disapprove a part of an appropriations bill which is not connected to that portion of the bill which was approved. 63

The analysis adopted by the Wisconsin Supreme Court in Sundby is not surprising in view of the foregoing precedent in Wisconsin. However, this case is significant in that the practical effect of the result in Sundby reveals the broad scope of the executive's partial veto authority under the Wisconsin Constitution.

IV. STATE EX REL. SUNDBY v. ADAMANY

On January 28, 1975, the Wisconsin legislature's joint committee of finance introduced Assembly Bill 222 which was the executive budget bill submitted by the governor. 64 The portion of Assembly Bill 222 which was material to this case involved the imposition of levy limits on towns, villages, cities, and counties. The proposal as submitted by the governor and incorporated in Assembly Bill 222 imposed a maximum levy allowed

61. In 63 Op. Att'y Gen. Wis. 313 (1974), the attorney general concluded that the governor could not object to contingencies or conditions placed in the appropriation by the legislature. Sec. 3 of the bill in question when passed by the legislature appropriated for snowmobile enforcement purposes the lesser of $130,000 or the amount of interest earned by snowmobile registration fees. By eliminating the second phrase, the effect of the governor's veto was to appropriate in any year, $130,000 for enforcement regardless of the amount of interest earned by registration fees. Since this action amounted to removal of a contingency in an appropriation bill, the attorney general concluded that the governor exceeded his authority under art. V, § 10.

62. In 55 Op. Att'y Gen. Wis. 160 (1966), the attorney general approved the governor's exercise, even though the partial veto effectuated a change in policy, since the parts of the bill he approved "taken as a whole, provide a complete, workable law."

63. The attorney general upheld the governor's objection to the restriction upon an indigent's exemption from payment of clerk's fees and suit taxes and his approval of an increase in judicial salaries contained in an appropriation bill. The attorney general concluded that the exercise of the governor's veto authority was constitutional since "There is no connection between the approved parts of the bill, on the one hand, and the vetoed part on the other." 59 Op. Att'y Gen. Wis. 95, 101 (1970).

64. The joint committee on finance is required to incorporate the governor's recommendation for appropriations for the next biennium into the executive budget bill. See Wis. Stat. § 16.47 (1973).
each local government unit. Under the governor’s proposal, this limit could only be exceeded by the unit if the electors approved the increase in a general referendum. Subsequently, the senate in its substitute amendment to Assembly Bill 222 adopted identical language in the corresponding sections of the bill.

However, the assembly-senate conference committee changed the procedure for exceeding the levy. In addition to the general referendum procedure, the governing body could exceed the levy limit without electoral approval provided a petition, signed by at least five percent of the electorate requesting a general referendum, were not filed subsequent to the local government’s publication of a notice of intent to exceed the levy limit.

65. The relevant sections in Wis. A.B. 222 concerning the imposition of levy limits are all identical, except for the references to towns, villages, cities and counties. Since each of the subsections are identified except for the references to the appropriate governing bodies, only proposals affecting the levy limits for towns in § 60.175(6) and (7) will be set forth herein. See note 66 infra.

66. The governor proposed that Wis. Stat. § 60.175 be created, subsecs. (6) and (7) thereof to read as follows:

(6) The department of revenue shall determine the maximum levy allowed each town for town purposes under this section and shall certify such amount to each town on November 15 of each year, commencing with 1975. If the town levies taxes in excess of such maximum without receiving approval of the electors under sub. (7), the excess amount shall be subtracted from subsequent distributions of shared taxes under subch. 1 of ch. 79 until fully recovered.

(7) The town board, by resolution adopted by a majority vote of those members present and voting may submit to the electors of the town at a spring election, general election or special election the question of whether the town may levy taxes for town purposes in excess of the maximum amount certified under this section by the department of revenue.

(a) The question presented to the electors shall be in substantially the following form:

Should the town board be authorized to adopt a property tax levy for town purposes for this year which is in excess of the maximum levy certified by the state?

(b) The authorization by referendum shall pertain only to the levy next following the referendum.

(c) The clerk of the town shall notify the department of revenue of the result of any such referendum no later than 10 days thereafter.

Wis. A.B. 222, § 435 (1975 Sess.).

67. The 1975 Conference Subcommittee Amendment 1 to Wis. A.B. 222 (1975 Sess.) proposed that Wis. Stat. § 60.175(7) read as follows:

(7) If the town board desires to increase its tax levy above the limitations specified in this section, it shall publish such intent in a class 1 notice under ch. 985 in the official town newspaper. The notice shall include a statement of the purpose and the amount of the proposed levy and the amount by which it wishes to exceed the limits imposed by this section. If, within 20 days after
The assembly-senate conference committee's proposal was passed by the legislature. Upon submission to the governor, he approved those parts of the bill which corresponded to his original executive budget bill and objected to the remaining parts of the bill. The effect of the governor's partial veto in Sundby was to require voter approval in a general referendum in every case where the local government intended to exceed its levy publication of the notice, a petition is filed with the town clerk signed by a number of electors equal to, or in excess of, 5% of the number of electors casting ballots in the town in the last gubernatorial election, the question of the proposed amount of increase in levy above the limitations specified in this section shall be submitted to a referendum at a spring election, general election or special election. If the increase is approved at the referendum, or if no petition is timely filed, the town may increase its levy in such amount and shall notify the secretary of revenue of such increase, on a form provided by the secretary, on or before March 1 following the levy.

(a) The question presented to the electors shall be in substantially the following form:

Should the town board be authorized to adopt a property tax levy for town purposes for this year which is in excess of the maximum levy certified by the state?

(b) The authorization by referendum shall pertain only to the levy next following the referendum.

(c) The clerk of the town shall notify the department of revenue of the result of any such referendum no later than 10 days thereafter.

68. As finally adopted in 1975 Wis. Laws, ch. 39, Wis. Stat. § 60.175(7) reads as follows:

(7) If the town board desires to increase its tax levy above the limitations specified in this section, it shall publish such intent in a class 1 notice under ch. 985 in the official town newspaper. The notice shall include a statement of the purpose and the amount of the proposed levy and the amount by which it wishes to exceed the limits imposed by this section. If within 20 days after publication of the notice, a petition is filed with the town clerk signed by a number of electors equal to, or in excess of, 5% of the number of electors casting ballots in the town in the last gubernatorial election, the question of the proposed amount of increase in levy above the limitations specified in this section shall be submitted to a referendum at a spring election, general election or special election. If the increase is approved at the referendum, or if no petition is timely filed, the town may increase its levy in such amount and shall notify the secretary of revenue of such increase, on a form provided by the secretary, on or before March 1 following the levy.

(a) The question presented to the electors shall be in substantially the following form:

Should the town board be authorized to adopt a property tax levy for town purposes for this year which is in excess of the maximum levy certified by the state?

(b) The authorization by referendum shall pertain only to the levy next following the referendum.

(c) The clerk of the town shall notify the department of revenue of the result of any such referendum no later than 10 days thereafter.

(Portions in italics were line vetoed by the governor.)
GOVERNOR'S PARTIAL VETO

limit. Consequently, through the use of his veto authority, the governor eliminated the option provided by the legislature and adopted the procedure which was originally proposed in the executive budget bill.

The Wisconsin legislature failed to override the governor's exercise of the veto and the part of Assembly Bill 222 which was approved became law on July 30, 1975. A petition challenging the constitutionality of the governor's exercise of the partial veto of sections of Bill 222 was filed as an original action in the Wisconsin Supreme Court.

The court essentially adopted the analysis originally formulated in State ex rel. Henry v. Wisconsin Telephone Co. and reaffirmed in State ex rel. Martin v. Zimmerman in support of its conclusion that the governor acted within his authority. In this regard, the court stated:

Thus, Henry and Martin establish the principle that the partial veto power may be utilized to veto any portion of a bill, whether the portion itself is an item of appropriation or not, even if the result effectuates a change in legislative policy, as long as the portion vetoed is separable and the remaining provisions constitute a complete and workable law.

In addition, the court reaffirmed the broad scope of the governor's partial veto authority. In effect, the court ruled that

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69. The governor explained his veto which, in effect, made mandatory the local referendums which the bill, as passed by the legislature, had made optional: Sections 435, 439, 441, 442 and 457 allow municipalities or counties to exceed the limits unless their citizens petition for a referendum. I have vetoed this provision to provide instead that a referendum be mandatory whenever a municipality or county believes the limit should be exceeded. A mandatory referendum is preferable because it ensures that a majority vote of the citizens will be required for the limits to be exceeded. Moreover, the partial veto will eliminate the 20-day delay which was required before a decision to raise the tax levy could be finalized. This speed-up of the process should aid municipalities in making their budget decisions.


70. On July 30, 1975, those portions of Wis. A.B. 222 which were approved by the governor were published in the Wisconsin State Journal. By subsequent action of the legislature, sections of 1975 Wis. Laws, ch. 39 were amended, repealed, and recreated in part by 1975 Wis. Laws, ch. 80. Chapter 80 did not change the referendum provisions of these sections as they appeared subsequent to the governor's partial approval.

71. 218 Wis. 302, 260 N.W. 486 (1935). See notes 38-46 supra and accompanying text.

72. 233 Wis. 442, 289 N.W. 662 (1940). See notes 47-50 supra and accompanying text.

73. 71 Wis. 2d 118, 130, 237 N.W.2d 910, 916 (1975).
the governor may object to portions of an appropriation bill which are not concerned with specific appropriations. The court applied the foregoing analysis in reviewing the governor's actions in this case and upheld the validity of the partial objection to Assembly Bill 222: "We conclude the action taken by the governor was valid, in that the portions vetoed, although not actually items of appropriation, were separable provisions, not constituting provisos or conditions to an item of appropriation, and the remaining portions constitute a complete and workable law."

The court's opinion in Sundby is also significant in that it expressly rejects the separation of powers analysis prevalent in numerous other jurisdictions. The court refused to accept the negative analysis inherent in the strict construction of the executive veto authority:

Some argument is advanced that in the exercise of the item veto the governor can negative what the legislature has done but not bring about an affirmative change in the result intended by the legislature. We are not impressed by this argued distinction. Every veto has both a negative and affirmative ring about it.

In rejecting the separation of powers analysis the court explicitly recognized the valid legislative role of the executive in Wisconsin as evidenced by the governor's powers under the Constitution and the specific authority under the statutes controlling the enactment of budget legislation. The court

74. The court stated: "The scope of the item veto power was also considered in State ex rel. Finnegan v. Dammann. In Finnegan the principle was reiterated that the power exists with respect to parts of an appropriation bill not dealing with appropriations." Id. at 131, 237 N.W.2d at 916 (footnotes omitted).
75. Id. at 135, 237 N.W.2d at 918.
76. See notes 15-26 supra and accompanying text.
77. 71 Wis. 2d at 134, 237 N.W.2d at 918.
78. Powers and duties. Section 4. The governor shall be commander in chief of the military and naval forces of the state. He shall have power to convene the legislature on extraordinary occasions, and in case of invasion, or danger from the prevalence of contagious disease at the seat of government, he may convene them at any other suitable place within the state. He shall communicate to the legislature, at every session, the condition of the state, and recommend such matters to them for their consideration as he may deem expedient. He shall transact all necessary business with the officers of the government, civil and military. He shall expedite all such measures as may be resolved upon by the legislature, and shall take care that the laws be faithfully executed.
gave a final stamp of approval to the governor’s active involvement in the legislative branch — “The governor, then, does have a constitutionally recognized role in legislation."

Although the Sundby decision is important for the issues it decided, it is equally important to recognize that the court did not decide a significant issue within the realm of the executive’s veto authority. Since the governor’s veto in Sundby did not involve an objection to a condition imposed on a specific appropriation or alteration of an appropriation figure, the court did not render an opinion on the propriety of such actions.

In short, Sundby stands for the proposition that if a governor is presented with a bill which contains an appropriation within its four corners, the governor may object to any portion of the bill provided the part approved constitutes a complete, workable law.

V. Sundby v. Adamany — A Shift in the Balance of Power

It is important to appreciate the significant accumulation of power the court’s analysis in Sundby affords the governor vis-a-vis the legislature. In effect, the governor can redraft a bill submitted for executive approval by selective deletions of separable parts contained in an appropriation bill. This accumulation of power can best be illustrated by the following example. Assume for purposes of this simplified example that the present Wisconsin statute limiting the lien rights of a landlord were contained in a section appended to an appropriation bill:

Sec. XYZ Lien of Landlord. Except as provided in ss. 281.43 and 704.05(5) or by express agreement of the parties, the landlord has no right to a lien on the property of the tenant; the common-law right of a landlord to distrain for rent is abolished.

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71 Wis. 2d at 131-33, 237 N.W.2d at 916-17.
80. Id. at 134, 237 N.W.2d at 918.
81. In this regard, the court stated:

Petitioner argues that recent opinions of the attorney general indicate that a governor cannot veto a portion of an appropriation bill altering an appropriation figure, or striking down a condition imposed on the amount appropriated. We do not need to consider these opinions or the propositions they stand for because there is no question in this case that the governor neither altered an appropriation nor removed a contingency or condition on the amount appropriated.

Id. at 131, 237 N.W.2d at 916 (footnotes omitted).
Assume, for purposes of this example, that the governor implements the following objection to section XYZ of the appropriation bill:

**Sec. XYZ Lien of Landlord.** The provided in ss. 281.43 landlord has no right to a lien on the property of the tenant; the common-law right of a landlord to distrain for rent is abolished.

Although the governor deleted an important exception to the mandate of section XYZ, the governor would be assured that this action is constitutional since the remaining portions of section XYZ constitute a complete, workable law within the meaning of *Sundby*. Consequently, the effect of the analysis in *Sundby* is to endow the governor with an important legislative role to redraft appropriation bills submitted for the governor’s signature by the use of selective deletions. In fact, the governor may have the power to object to conditions contained in a part of an appropriations bill not involving specific appropriations. *Sundby*, by implication, may have approved such action since the court only refused to decide the issues involving vetoes of conditions to parts of bills containing specific appropriations.\(^82\)

In the final analysis, the objective test adopted in *Sundby* and the corresponding increase in legislative power afforded the governor may operate to foster legislative conformity with the original purpose of the partial veto authority:

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 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.\(^83\)

To paraphrase the words of Alexander Hamilton cited at the outset of this article, the practical effect of the court’s analysis in *Sundby* and the accompanying “propensity of the [executive] department to intrude upon the rights, and to

\(^82\) *Id.*

\(^83\) State *ex rel.* Martin *v.* Zimmerman, 233 Wis. 442, 447-48, 289 N.W. 662, 664 (1940).
absorb the powers of the [legislature]” may be the most effective tool for eliminating the objectionable practice of logrolling so prevalent in appropriation legislation. The most effective vehicle for decreasing the legislative power of the governor under the *Sundby* analysis would be for the legislature to discontinue the practice of appending non-appropriation bills in appropriation legislation. This would accomplish the desired purpose of the drafters of article V, section 10, and correspondingly limit the governor’s authority to redraft legislation through selective deletions of parts of non-appropriation bills contained in appropriation bills.

While the court’s analysis in *Sundby* may serve to accomplish the desired purpose of the drafters of the Wisconsin Constitution, the court’s most significant contribution is its adoption of the objective test. As mentioned at the outset, the analysis adopted by the court in *Sundby* presents an attractive alternative to the semantic device inherent in the strict construction analysis so prevalent in other jurisdictions. In effect, the governor is not presented with the troublesome task of deciding whether the effect of an objection to portions of an appropriation bill constitutes an “affirmative” or “negative” act. In the court’s own words, “Every veto has both a negative and affirmative ring about it.”8 The principal advantage of the court’s reaffirmation of the “complete workable law” analysis is that it affords predictability to the governor. Under this objective measure the governor can decide if a particular exercise of the veto authority is constitutional. If the remaining approved portions of the appropriation bill constitute a complete workable law, the governor is assured that his or her objections to the portions of the appropriation bill are a constitutional exercise of the veto authority.

The predictability and certainty which the *Sundby* analysis affords both the executive and legislative branches should serve to influence other jurisdictions to adopt this objective test when they are faced with similar challenges to the governor’s exercise of the veto authority.

84. 71 Wis. 2d at 134, 237 N.W.2d at 918.