

GUEST OBSERVER

By Louis Fisher

Congress, Don't Cede Budgetary Power to President

Some Members of Congress are starting to take an interest in giving the president an item veto to help control budget deficits. A Senate subcommittee last month asked experts and attorneys whether federal courts are likely to find constitutional a form of item veto called "expedited rescission." It would authorize the president, upon signing an appropriations bill, to put together a list of projects to be canceled. The procedure requires Congress to take a vote on this package within a fixed period of time, with no opportunity for amendment.

It is not sufficient at a Congressional hearing to predict whether expedited rescission might be upheld in the courts. The judiciary is not entrusted to protect the legislative interests of Congress. Lawmakers must do that. They take an oath to support and defend the Constitution, which means more than satisfying judicial tests and standards. Lawmakers are expected to protect the powers of their own branch to safeguard the system of checks and balances. No one outside the legislative branch has the requisite understanding or authority to decide Congressional needs.

Expedited rescission would weaken Congress and make it more subservient to presidential power. That constitutional deficiency exists even if courts were to find the process acceptable. The process weakens Congress and strengthens the president in a number of ways. The mere introduction of an expedited rescission bill sends a false signal that Congress cannot be trusted as fiscal guardian but that the president can.

The record is overwhelmingly clear that the nation enters periods of high annual deficits not because of Congressional initiatives but because presidents succeed with tax cuts, major spending commitments or a combination of the two. That is the record under Ronald Reagan (who increased the national debt from \$1 trillion to

\$3 trillion in eight years), George W. Bush and now Barack Obama. Why reward irresponsible presidents with an item veto? Why imply that presidents are inherently superior as guardians of the power of the purse, a power that is central to the legislative branch?

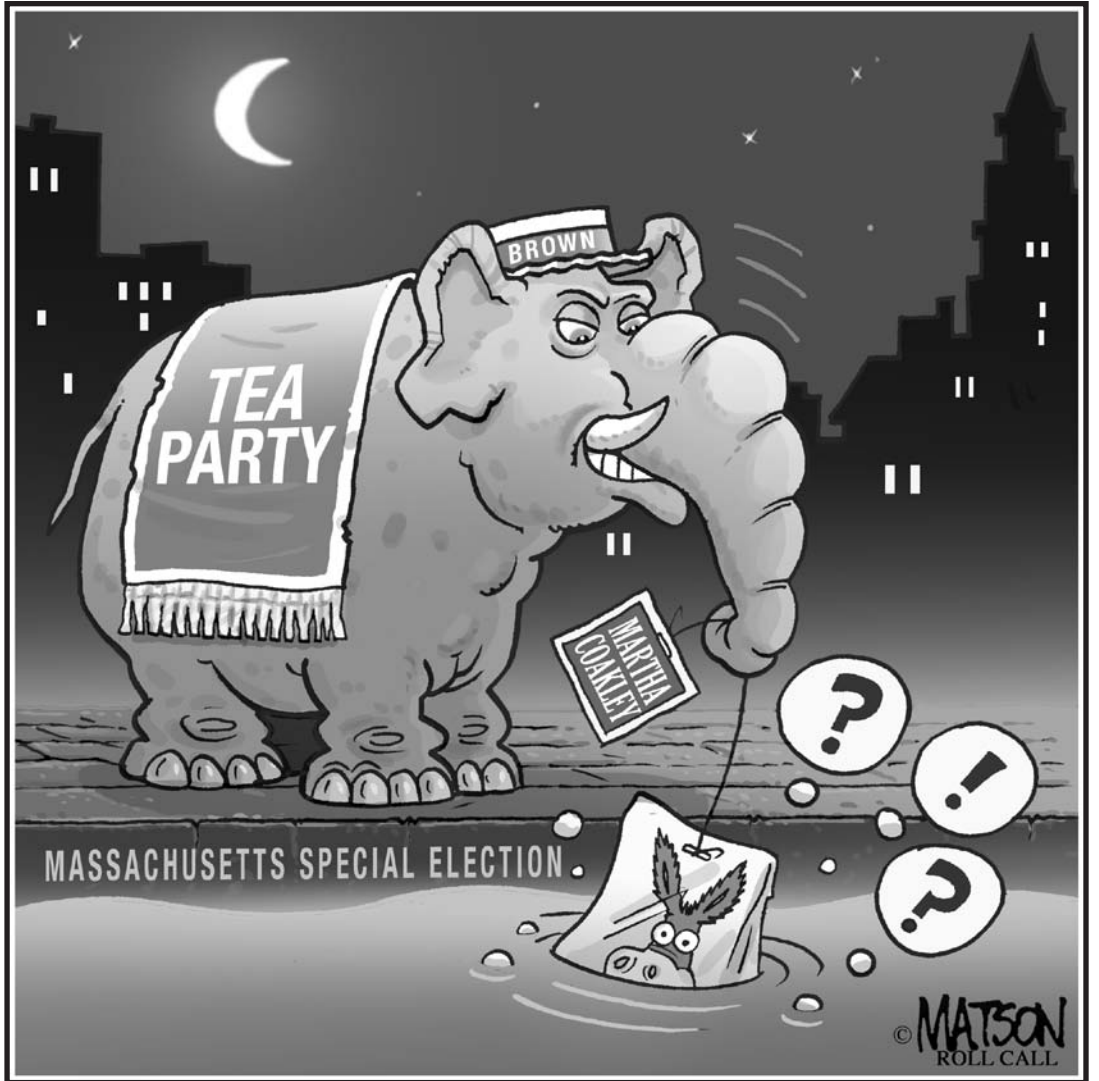
Enactment of expedited rescission would reverse the presumption of the Impoundment Control Act of 1974. That statute rested on this basic constitutional principle: Congress controls spending priorities, not the president. Richard Nixon had claimed he could obligate all, part or none of the funds appropriated by Congress. The 1974 law took that power from the president. Expedited rescission returns some of that leverage to the White House.

Spending priorities are established under the Constitution through the regular legislative process, which ends with enactment of an appropriations bill. Expedited rescission allows the president, after a bill is enacted, to put together a list of projects to be rescinded. Priorities are therefore changed by presidential (not Congressional) initiative.

Suppose the president submits a rescission package and Congress votes it down. The president clearly wins. The public has been told by Congress that it is so fiscally irresponsible that it decided to enhance presidential authority. Press coverage has highlighted the president's steadfast dedication to fiscal sanity, yet lawmakers refuse to provide their support.

Alternately, suppose the president submits a rescission package and Congress grants its approval. The president wins decisively. Lawmakers have now confirmed that the appropriations bill they submitted was defective and that the president is the superior fiscal guardian.

Who will assemble the rescission package? No one believes that the president will sift through an appropriations bill and identify projects to be canceled. On what grounds can it be argued that presidential aides and agency officials are more qualified than lawmakers to decide how federal funds should be allocated to districts and states? Lawmakers know local needs better than executive employees and



have the legitimacy that comes from being an elected official.

There are other costs to Congress. The president now has a new tool to coerce lawmakers and undermine their independence. He or his aides can call lawmakers and explain that a particular project in their district or state has been included in a draft rescission bill. The lawmaker is advised that the project has obvious merit and every effort will be made to remove it from the list of proposed rescissions. The White House is on the lawmaker's side. During this phone call or personal visit, the conversation shifts ever so slightly. The lawmaker is asked if he or she might be willing to support a bill, treaty or nomination desired by the president. Through this quid pro quo (hidden from the public) expenditures are pushed up, quite likely far beyond whatever "savings" might come from the process.

What we know about the item veto reveals quite strongly that potential savings, if any, would be extremely modest. In 1992, the then-General Accounting Office released a report


estimating the savings that could be achieved through an item veto. Estimated savings over a six-year period: \$70 billion. When challenged, the GAO acknowledged that actual savings from an item veto "are likely to have been much less," even "close to zero." The GAO conceded that the net effect of item-veto power, because of quid pro quo, could be to increase spending. When President Bill Clinton actually exercised the Line Item Veto Act of 1996, he could apply it not only to discretionary spending but also to new items of direct spending (entitlements) and targeted tax benefits. Even so, total savings over a five-year period came to less than \$600 million. The item veto, in any of its forms, is not a remedy for heavy deficits.

A further cost to Congress is the capacity of the president under expedited rescission to drive and control the legislative agenda. Whether lawmakers support or reject a president's recommendations, a rescission bill must be referred to committee and debated on the floor, followed by votes.

Also, the targets for rescission will be only Congressional preferences, not presidential favorites.

Beyond these institutional and constitutional damages, expedited rescission takes the focus off the most effective control over budget deficits and high spending: the budget the president submits at the start of the year. It is fully within the president's power to recommend a budget that balances expenditures and revenues. The historical record demonstrates that the aggregate numbers submitted by the president (total spending, deficit or surplus, etc.) are generally followed by Congress. Legislative changes usually affect priorities, not aggregates. If the president wants to display fiscal responsibility, he needs to do it when he is submitting the budget. If the budget is not in balance, little can be done through the regular legislative process to correct it, including expedited rescission.

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