South Carolina Law Review

Volume 50 | Issue 2 Article 9

Winter 1999

Tipping the Balance of Power: A Critical Survey of the Gubernatorial Line Item Veto

Winston D. Holliday Jr.

COMMENT

TIPPING THE BALANCE OF POWER: A CRITICAL SURVEY OF THE GUBERNATORIAL LINE ITEM VETO

> *This power over the purse may, in fact, be regarded as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure.*[1]

I. INTRODUCTION

In the summer of 1998 the United States Supreme Court and the South Carolina Supreme Court waded into the struggle between their respective executive and legislative branches for budgetary control. At the center of the fray stood the line item veto, which allows the executive to intervene in the legislature's most significant power—the power to appropriate money.[2] Though both courts ultimately repudiated their executives' actions, the distinction between the issues in controversy was clear. The federal line item

1. THE FEDERALIST NO. 58, at 350 (James Madison) (Isaac Kramnick ed., 1987).
2. *See* Antony R. Petrilla, Note, *The Role of the Line-Item Veto in the Federal Balance of Power*, 31 HARV. J. ON LEGIS. 469, 475 (1994).

veto was a new power, and the United States Supreme Court had to determine where, if at all, that power fit within our constitutional system. In contrast, the line item veto is well established at the state level; however, its implementation varies among jurisdictions. The South Carolina Supreme Court faced the task of placing the state's item veto on a continuum of options, at either end of which rested the continuing authority of opposing branches of government to determine the content of spending bills.

At the federal level, President Bill Clinton sought to exercise a congressional extension of his constitutional veto power for the first time by striking an appropriations provision that would have waived, among other things, Medicaid expenses due from New York City.[3] In canceling the President's action, the Supreme Court held that the Line Item Veto Act[4] allowed the President "to create a different law" through a procedure foreign to the dictates of Article I, Section 7 of the United States Constitution.[5] The Court noted that such a change in the role of the branches must come from a constitutional amendment, not a statute.[6]

In South Carolina Governor David Beasley tested the bounds of his established line item veto power by selectively editing five separate budgetary provisions.[7] Although not provoking the dramatic confrontation seen at the federal level, his action, if sustained by the court, would have expanded the powers already granted through Article IV, Section 21 of the South Carolina Constitution. The court turned back the Governor's striking of "sentences, words and phrases," holding that "the Governor can only veto those parts labeled by the legislature as items or sections."[8] The justification for this decision rested on grounds similar to the federal decision, which was the unsupportable encroachment of the executive into territory reserved for the legislature.[9]

Both courts found that the chief executives had overstepped their constitutional authority by exercising a legislative type of authority that altered legislation, rather than simply voiding it. While the restored spending provisions no doubt brought much relief to their beneficiaries, the rulings more significantly affirmed the legislatures' preeminence in setting budgetary priorities. The purpose of this Comment is to explore the foundation and nuances of the state decision. While the federal issue has been tabled pending a constitutional amendment, conflicts at the state level occur every time the chief executive attempts to exert authority under a liberal interpretation of the power. The following Parts of this Comment summarize South Carolina's item

3. Clinton v. City of New York, 118 S. Ct. 2091, 2095-96 (1998).
4. 2 U.S.C. §§ 691-92 (Supp. II 1996).
5. *Clinton*, 118 S. Ct. at 2108.
6. *Id.*
7. Drummond v. Beasley, 331 S.C. 559, 503 S.E.2d 455 (1998) (per curiam).
8. *Id.* at 564, 503 S.E.2d at 457.
9. *See id.*

veto history; analyze other state interpretations of constitutional line item veto provisions; and propose guidelines that focus on the textual, contextual, and functional properties of line items within spending bills.

II. BACKGROUND

The progression of South Carolina case law focuses on refining the degree of latitude the Governor possesses to alter appropriations bills. The South Carolina Constitution establishes the Governor's line item veto authority as follows:

> Bills appropriating money out of the Treasury shall specify the objects and purposes for which the same are made, and appropriate to them respectively their several amounts in distinct items and sections. If the Governor shall not approve any one or more of the items or sections contained in any bill appropriating money, but shall approve of the residue thereof, it shall become a law as to the residue in like manner as if he had signed it. The Governor shall then return the bill with his objections to the items or sections of the same not approved by him to the house in which the bill originated . . . .[10]

Drummond v. Beasley was the latest interpretation of the line item veto by the South Carolina Supreme Court. The court laid the foundation for its current construction in the 1960 decision *Cox v. Bates*,[11] which addressed the fundamental issue of what constitutes an item. The decision involved a taxpayer challenge to an educational reserve fund to be drawn from excess revenues. The taxpayers alleged that the statute did not properly delineate appropriations for each of the counties into items and sections.[12] The court upheld the legislation, stating that "'[t]he requirement of itemization is to be given a common sense construction, and the statement of a single appropriate general purpose may be sufficient, although there are many items, particularly where it is difficult to determine in advance the exact amount of each of the items.'"[13] The principle guiding the decision was that "distinct items and sections" were more easily severable by the Governor for veto purposes "without affecting the validity of other appropriations."[14] This "common

10. S.C. CONST. art. IV, § 21.
11. 237 S.C. 198, 116 S.E.2d 828 (1960).
12. *Id.* at 216, 116 S.E.2d at 835. Note that *Cox* was not a veto case. Instead, it addressed the General Assembly's obligation to organize appropriations bills in sections to facilitate review by the Governor.
13. *Id.* at 218, 116 S.E.2d at 836-37 (quoting 81A C.J.S. *States* § 237c (1977)).
14. *Id.* at 220, 116 S.E.2d at 837.

sense" rule would guide the court as it considered subsequent modifications of budget items in the context of Article IV, Section 21.

A series of line item veto challenges arose during the Beasley administration. The South Carolina Supreme Court considered the first two simultaneously in 1995. *Williams v. Morris*[15] arose out of a squabble between Comptroller General Earl Morris and Senator Marshall Williams over the disbursement of funds to cover interim expenses for the Senate. That year the General Assembly had adjourned prior to receiving Governor Beasley's vetoes, one of which struck the interim expenses in question.[16] The court rejected Senator Williams's challenge, though it recognized that "the grant of veto power to the Governor must be strictly construed."[17] Given this strict construction, the constitutional veto power must be upheld in a manner that preserves the Governor's participation in the legislative process.[18] The court blocked the General Assembly from circumventing that power by passing legislation at the end of the session and adjourning before the Governor's five-day period for consideration lapsed.[19] Significantly, had the court upheld Senator Williams's challenge, the General Assembly would have gained the power to spend money not approved by the Governor simply by adjourning before he could return a veto message.[20]

On the same day as *Williams* the court issued an opinion concerning a challenge by the South Carolina Coin Operators Association to Governor Beasley's veto of provisions affecting the "regulation and licensing of video slot machines."[21] Specifically, the Governor vetoed parts of section 67 of the 1995-96 Appropriations Act, but not the whole.[22] In upholding the Governor's veto message in *Coin Operators*, the court stated:

> The Executive power of veto is ordinarily exercised only with respect to the whole of a bill or joint resolution[,] but with

---

15. 320 S.C. 196, 464 S.E.2d 97 (1995) (per curiam).
16. *Id.* at 197-98, 464 S.E.2d at 98.
17. *Id.* at 206, 464 S.E.2d at 102.
18. *Id.*
19. *Id.*
20. *Id.* at 199, 464 S.E.2d at 98.
21. South Carolina Coin Operators Ass'n v. Beasley, 320 S.C. 183, 185, 464 S.E.2d 103, 103 (1995) (per curiam).
22. Governor Beasley's Veto Message Number 97 stated:

> I am vetoing Item (B) which provides for licensing of 'Video Slot Machines'; Item (C)(1) which increases the biennial license fees; Item (E) which allows for eight machines, eliminates minimum gross proceeds and extends video poker operation until 2:00 AM Sundays; Item (F) which repeals limited cash pay-outs; and, Item (H) which permits counties to impose a business license tax on gross income in addition to the license fee.

Coin Operators, 320 S.C. at 185, 464 S.E.2d at 104.

> reference to bills appropriating money from the State treasury the constitution expressly makes an exception to the rule and as to them the veto may go to any items or sections without impairing the residue.[23]

Significantly, the court examined the post-veto "residue" to ensure that the essence of the legislation had not been lost. Finding that the integrity of the bill remained, the court allowed the veto message to stand.[24]

Armed with this seeming vindication, the Governor again moved to strike portions of an appropriations bill in *Drummond v. Beasley*.[25] This time, however, the court declined to extend the executive's veto power. After first characterizing the language of *Coin Operators* pertaining to the line item veto as "dicta,"[26] the court subsequently held that "the Governor can only veto those parts labeled by the legislature as items or sections," insofar as to do otherwise would "not meet the common sense construction of an item or section."[27] Importantly, the court distinguished *Coin Operators*, which addressed the deletion of subsections, with the present case, in which the Governor struck sentences, words, and phrases, which are all smaller units than subsections.[28]

In analyzing this more particular form of the item veto, the South Carolina Supreme Court looked to decisions from other states for guidance.[29] Extensive case law from Iowa, along with examples from New Mexico and Colorado, supported a restrictive view of the item veto power that did not include the ability to delete fragments of items.[30] Finding ample support for its decision, the court proscribed any item veto striking units smaller than those found in *Coin Operators*.[31]

The preceding review of South Carolina case law clearly supports the assertion that the supreme court plays an integral role in maintaining the

---

23. *Id.* at 187, 464 S.E.2d at 105 (quoting Parker v. Bates, 216 S.C. 52, 71, 56 S.E.2d 723, 731 (1949)).

24. *Id.* at 187-88, 464 S.E.2d at 105.

25. 331 S.C. 559, 503 S.E.2d 455 (1998) (per curiam). Senator Drummond challenged vetoes 5, 6, 11, 19, and 20, which respectively concerned fee increases by the Department of Health and Environmental Control, guidelines for the use of appropriated funds by the Department of Alcohol and Drug Abuse Services Chemical Dependency Programs, the Ethics Commission authorization to investigate maintenance logs of state-owned aircraft, an effective date for video poker legislation, and a provision requiring "the advice and consent of the Senate" in conjunction with the Drug Awareness Resistance Education Fund. *Id.* at 560 n.1, 503 S.E.2d at 456 n.1.

26. *Id.* at 563, 503 S.E.2d at 457.

27. *Id.* at 564, 503 S.E.2d at 457.

28. *Id.* at 562, 503 S.E.2d at 456.

29. *Id.* at 563, 503 S.E.2d at 457.

30. *See* Colorado Gen. Assembly v. Lamm, 704 P.2d 1371 (Colo. 1985); Colton v. Branstad, 372 N.W.2d 184 (Iowa 1985); Rush v. Ray, 362 N.W.2d 479 (Iowa 1985); Welden v. Ray, 229 N.W.2d 706 (Iowa 1975); State *ex rel.* Coll v. Carruthers, 759 P.2d 1380 (N.M. 1988) (per curiam).

31. *Drummond*, 331 S.C. at 564, 503 S.E.2d at 457.

balance between the executive and legislative branches regarding the appropriation of money. This function is not unique to South Carolina's courts. As the case studies that follow demonstrate, courts play a vital role in determining the extent to which the legislature's control of the purse strings is limited by the executive's item veto.

III. CASE STUDIES: IOWA, WISCONSIN, AND VIRGINIA

While the line item veto is a novelty at the federal level, the constitutions of forty-three states contain provisions allowing their chief executives to strike portions of legislation.[32] Considering the exercise of this power by some governors along with the subsequent challenges by the legislatures and eventual adjudication by the courts, the judiciary clearly plays a critical role in maintaining the relationship between its fellow branches of government. The following state-based case summaries illustrate the significant difference in how this power shrinks or grows depending on the outlook of the courts. Each state is included for a specific reason. Iowa has extensive case history addressing a veto structured similarly to South Carolina's. Wisconsin provides an example of court decisions that are highly deferential to the Governor, resulting in the accumulation of spending power in the executive branch. Finally, Virginia's inclusion rests on its status as a fellow southern state and the much-cited precedent contained in *Commonwealth v. Dodson*.[33] The circumstances surrounding these cases form the foundation for the analysis in Part IV.

A. Iowa

The South Carolina Supreme Court looked to Iowa precedent for guidance in the *Drummond* decision.[34] Though not mentioned in *Drummond*, Iowa's constitutional mechanism for the exercise of the item veto was similar to South Carolina's.[35] Also, both courts had to confront a nontraditional assertion of the item veto power– namely, the excision of portions of appropriations that had

32. State *ex rel.* Wis. Senate v. Thompson, 424 N.W.2d 385, 388 (Wis. 1988).
33. 11 S.E.2d 120 (Va. 1940).
34. *See Drummond*, 331 S.C. at 563, 503 S.E.2d at 457.
35. Iowa's constitution provides:

> The governor may approve appropriation bills in whole or in part, and may disapprove any item of an appropriation bill; and the part approved shall become a law. Any item of an appropriation bill disapproved by the governor shall be returned . . . . Any such item of an appropriation bill may be enacted into law notwithstanding the governor's objections, in the same manner as provided for other bills.

IOWA CONST. art. III, § 16.

not been classified by the legislature as distinct items.

The landmark decision of *Welden v. Ray*[36] established that provisions which were not "separate" and "severable" from lawful appropriations were "beyond the scope" of the Governor's item veto authority.[37] The items in question allocated funds for the Iowa Commission on Alcoholism, the Department of Social Services, and the Office for Economic Opportunity.[38] Significantly, the court stated that "if the Governor desires to veto a legislatively-imposed qualification upon an appropriation, he must veto the accompanying appropriation as well."[39] This was a clear delineation between the legitimate act of striking entire portions of a bill and the prohibited act of selectively excising part of the bill. Quoting language that would establish the standard by which the court would measure future item vetoes, the court said "'*the item veto power does not contemplate striking out conditions and restrictions alone as items, for that would be affirmative legislation, whereas the governor's veto power is a strictly negative power, not a creative power.*'"[40]

In 1985 State Senator George Rush challenged Governor Robert Ray's striking of a phrase, from five appropriations bills, that precluded the transfer of funds between provisions.[41] The Iowa Supreme Court found that this provision was not subject to Governor Ray's item veto authority, nor was it an intrusion on his executive power.[42] Central to the decision was the judgment that the provisions in each of the bills were "qualifications," not "item[s],"[43] a finding consistent with that of *Welden.*

The same court turned back a challenge by the General Assembly in a decision issued five months later. In *Colton v. Branstad*[44] the Iowa Supreme Court held that the Governor's deletion of a rider[45] provision in an appropriations bill was a constitutional exercise of his item veto authority.[46] The opinion, quoting language from a Louisiana case, stated:

> Just as the Governor may not use his item-veto power to

---

36. 229 N.W.2d 706 (Iowa 1975).
37. *Id.* at 715.
38. *Id.* at 707-09.
39. *Id.* at 713.
40. *Id.* (quoting Don Muyskens, Note, *Item Veto Amendment to the Iowa Constitution*, 18 DRAKE L. REV. 245, 249-50 (1969)).
41. *See* Rush v. Ray, 362 N.W.2d 479, 480 (Iowa 1985). The phrases each read substantially as follows: "[F]unds appropriated by this Act shall not be subject to transfer or expenditure for any purpose other than the purposes specified." *Id.*
42. *Id.*
43. *Id.*
44. 372 N.W.2d 184 (Iowa 1985).
45. A "rider" is "[a] clause, usually having little relevance to the main issue, added to a legislative bill." THE AMERICAN HERITAGE DICTIONARY 1062 (2d College ed. 1985).
46. *Colton*, 372 N.W.2d at 192. The rider under consideration gave the Family Planning Counsel authority to distribute federal funds to local family planning agencies. The overall appropriation allocated money to the Department of Health. *See id.* at 186-87.

> usurp constitutional powers conferred on the legislature, neither can the legislature deprive the Governor of the constitutional powers conferred on him as the chief executive officer of the state by including in a general appropriation bill matters more properly enacted in separate legislation.[47]

In summary the Iowa Supreme Court followed a deliberate course of adjudicating interbranch conflicts in strict accordance with the language of Article III, Section 16 of the Iowa Constitution. The clearly drawn distinction, mirrored in *Drummond*, allows the wholesale striking of specific, intact items while disallowing the deletion of select conditions within these items. The Iowa court's efforts to maintain a careful balance between the branches contrast markedly with Wisconsin's generous rendering of the Governor's item veto power.

B. Wisconsin

Interpretation of Wisconsin's line item veto provision[48] has been deferential to the Governor, largely due to the Wisconsin Supreme Court's expansive view of the meaning of the word "part" in the state constitution.[49]

---

47. *Id.* at 190 (quoting Henry v. Edwards, 346 So. 2d 153, 157-58 (La. 1977)).

48. "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.

49. *See* State *ex rel.* Wis. Senate v. Thompson, 424 N.W.2d 385, 388 (Wis. 1988). Moreover, in *State ex rel. Wisconsin Telephone Co. v. Henry*, 260 N.W. 486, 491 (Wis. 1935), the court averred:

> [I]f, in conferring partial veto power . . . 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 . . . 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 section 10, art. 5, Wis. Const., 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, which . . . is "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 . . . whether actually separate or not; a piece, fragment, fraction, member, or constituent."

Finding a semantic difference between the words "part" and "item," the court's decisions give the Governor broad latitude in striking fragments of appropriations bills,[50] a policy both Iowa and South Carolina specifically reject.[51] As a result, Wisconsin's Governor wields significant influence over the final structure and content of that state's appropriations bills.

The court's first look at the constitution's item veto provision occurred in *State ex rel. Wisconsin Telephone Co. v. Henry*,[52] in which a telephone company challenged the law's validity because the Governor vetoed "provisos or conditions inseparably connected . . . and . . . integral" to the rest of the bill.[53] Underlying the company's claim was its effort to avoid paying taxes which might be invalid:

> [I]f [the plaintiffs] make payment of taxes under the bill and it should be held that it never became a law because [it was] not enacted and published in the manner required by the Constitution and statutes of Wisconsin, then the plaintiff and such other taxpayers would be without any remedy because the provisions of the bill for the recovery of the taxes so paid would be invalid as law . . . .[54]

The court held that the Governor was free to veto parts of a bill, deferring to the legislature only where the language of the act indicates that it is to stand as a whole.[55] Though this conclusion might exceed the mandate of the original amendment, "there 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."[56] The court, rather than adhering to a strict view of separate duties for separate branches, viewed the Governor of Wisconsin as a significant player in the formulation of legislation.

Subsequently, the Wisconsin Supreme Court reviewed the validity of a bill approved only in part by the Governor after the adjournment of the legislature.[57] At issue was whether the remnant was a viable law.[58] The Secretary of State thought that it was not and refused to publish the bill, which

---

50. *See Thompson*, 424 N.W.2d at 388.

51. *See* Welden v. Ray, 229 N.W.2d 706, 713 (Iowa 1975); Drummond v. Beasley, 331 S.C. 559, 563-64, 503 S.E.2d 455, 457 (1998) (per curiam).

52. 260 N.W. 486 (Wis. 1935).

53. *Id.* at 488.

54. *Id.*

55. *Id.* at 492.

56. *Id.*

57. Such an adjournment is often referred to by the term *sine die*, which means "without assigning a day for a further meeting or hearing." BLACK'S LAW DICTIONARY 1385 (6th ed. 1990). For a *sine die* case in South Carolina, see Williams v. Morris, 320 S.C. 196, 464 S.E.2d 97 (1995) (per curiam).

58. State *ex rel.* Martin v. Zimmerman, 289 N.W. 662, 663-64 (Wis. 1940).

appropriated money to the state department of public welfare for aid for dependent children.[59] As a result, the Secretary refused to transfer the funds.[60] The court looked to the purpose of the item veto, which was "to prevent, if possible, the adoption of omnibus appropriation bills, log-rolling, the practice of jumbling together in one act inconsistent subjects," in upholding the Governor's actions.[61] Despite the notion that the edited version of the bill "effectuate[d] a change in policy," the parts left intact "constitute[d] an effective and enforceable law on fitting subjects for a separate enactment by the legislature."[62]

Building on the Governor's court-sanctioned power to amend legislation, a 1978 decision, *State ex rel. Kleczka v. Conta*,[63] confirmed the principle that the chief executive's veto authority allowed him to change a bill's underlying policy. In *Conta* the bill in question allowed taxpayers to contribute to the Wisconsin Election Campaign Fund through a check-off provision on their tax returns.[64] The Governor transformed this provision into an obligation for the state's general fund by deleting two essential phrases.[65] Applying the principle of severability, which indicates that the vetoed portion may be excised while leaving a "complete, workable bill," the court declared the Governor's modified version a valid law.[66] "Under the Wisconsin Constitution, the governor may exercise his partial-veto power by removing provisos and conditions to an appropriation so long as the net result of the partial veto is a complete, entire, and workable bill which the legislature itself could have passed in the first instance."[67] Whether the legislature would have passed such a bill was not a factor in the analysis.

Most recently, the Wisconsin Supreme Court held that the Governor could exercise partial veto power to veto "phrases, digits, letters, and word fragments."[68] In *State ex rel. Wisconsin Senate v. Thompson* members of the state legislature challenged Governor Tommy Thompson's deletion of sub-elements contained in the 1987-89 biennial budget bill.[69] Relying on the

---

59. *Id.* at 663.
60. *Id.*
61. *Id.* at 664.
62. *Id.* at 665.
63. 264 N.W.2d 539 (Wis. 1978).
64. *Id.* at 540.
65. *Id.* at 541. The bill stated: "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.* (emphasis added). Deletion of the italicized phrases negated the increase, thereby altering the underlying legislative policy. *Id.* Although the bill would have still allocated money to the election fund, it would have done so through tax revenues on hand, not through a tax increase of one dollar, which was the legislature's original plan.
66. *Id.* at 542.
67. *Id.* at 555.
68. State *ex rel.* Wis. Senate v. Thompson, 424 N.W.2d 385, 386 (Wis. 1988).
69. *Id.*

principle established in *Kleczka,* the decision allowed any editing that left "a complete, entire, and workable law."[70] In language that left no doubt as to the Governor's role in formulating legislation, the court stated that "what the legislature has assembled, the Governor can disassemble 'part' by 'part.'"[71] The result is that Wisconsin's Governor possesses legislative power unique in the sweep of its application. "This broad and expansive interpretation of the governor's partial veto authority as mandated by the constitution has, in effect, impelled this court's rejection of any separation of powers-type argument that the governor cannot affirmatively legislate by the use of the partial veto power."[72] The only limitation levied was the requirement of "germaneness," or that "all of the new provisions resulting from those vetoes involve the same subject matter as the original legislative enactment."[73] Essentially, this limitation imposed the lenient restriction that the Governor could not create an entirely new bill by deleting core phrases without which the central purpose of the original legislation would be lost. The scope of this interpretation[74] is essentially the radical extension of executive power rejected by the South Carolina Supreme Court in *Drummond.*

C. *Virginia*

Virginia occupies a place on the item veto continuum slightly more deferential to the executive than Iowa but much less so than Wisconsin. Item veto jurisprudence in Virginia rests on two principle cases. In the first, *Commonwealth v. Dodson,*[75] the court had to interpret language in the state

---

70. *Id.* at 388.
71. *Id.* at 389.
72. *Id.* at 394.
73. *Id.*
74. The Wisconsin court did include the following caveat:

> We refrain from resolving in this opinion the petitioners' claim that some of the challenged vetoes are invalid because the resulting provisions are inartful, clumsy, ungrammatical or incomprehensible. We note, however, that the test applied to determine the validity of the governor's partial vetoes is not one of grammar. The only requirement is that the result remaining after the partial veto is a "complete and workable law."

Id. at 398 (quoting State *ex rel.* Kleczka v. Conta, 264 N.W.2d 539, 551 (Wis. 1978) (footnote omitted)).

75. 11 S.E.2d 120 (Va. 1940). This case is another *sine die* case in which the Governor eventually returned a veto message excising spending provisions addressing the following subjects: (1) employment and compensation of lawyers in the attorney general's office, (2) election and compensation of the legislative director, (3) compensation of the legislative director's employees, (4) administration of the State Planning Board, (5) operation of a boat by the Commission of Fisheries, (6) compensation of various state officers, and (7) production of information by heads of state agencies. *Id.* at 130-31.

constitution proscribing the modification of appropriations bills through the excision of certain objectionable portions.[76] The Virginia Supreme Court of Appeals hinged its holding on a refinement of the term "item," specifically, whether "conditions or restrictions" on an appropriation constituted items subject to being struck under the Governor's constitutional veto authority.[77]

First, the court determined that an item refers to a part of a bill which can be separated "without affecting its other purposes or provisions."[78] The court further limited the Governor's authority by excluding qualifications and directives contained within spending measures:

> "It follows conclusively that where the veto power is attempted to be exercised to object to a paragraph or portion of a bill other than an item or items, or to language qualifying an appropriation or directing the method of its uses, he exceeds the constitutional authority vested in him, and his objection to such paragraph, or portion of a bill, or language qualifying an appropriation, or directing the method of its use, becomes non-effective."[79]

This portion of the holding sought to limit the Governor's ability to modify appropriations through the revision of conditional language while leaving the allocation intact.

Finally, the court defined an "item" contained in an appropriation bill as "an indivisible sum of money dedicated to a stated purpose."[80] It further specified that conditions were inherent to the item and must either be observed or struck down according to the fate of the bill—they did not stand alone.[81] The justices eventually found that six of the seven vetoes were not authorized by the Virginia Constitution, primarily because they failed to meet the definition of "item" articulated in the decision.[82]

In a later decision, the Virginia Supreme Court upheld the Governor's veto of part of a mass transit appropriation, drawing the distinction once again between an "item" and a "condition."[83] The appropriation in question allocated five million dollars per year for capital costs incurred in developing the rail portion of a mass transit system that also included a bus service and parking

---

76. "The Governor shall have the power to veto any particular item or items of an appropriation bill, but the veto shall not affect the item or items to which he does not object." VA. CONST. art. V, § 6(d).

77. *Dodson*, 11 S.E.2d at 127.

78. *Id.* at 124.

79. *Id.* (quoting Bengzon v. Secretary of Justice, 299 U.S. 410, 414 (1937)).

80. *Id.* at 127.

81. *See id.*

82. *Id.* at 130-31.

83. Brault v. Holleman, 230 S.E.2d 238 (Va. 1976).

facilities.[84] The Governor struck only the rail portion.[85] The court considered "the question whether the Metro Rail appropriation is an 'item' within the meaning of Article V, Section 6 of the Virginia Constitution and thus subject to the Governor's power of veto."[86]

The petitioners argued that this "unified transit system" constituted a single budgetary item that could not be vetoed apart from the parking lot and bus allocations.[87] The court, relying heavily on *Dodson*, recited the criterion that an item "is an indivisible sum of money dedicated to a stated purpose" which must be struck as a whole, including any attached conditions.[88] Petitioners further urged that if the struck and preserved provisions were so related that they were legally "tied up," then they constituted a single item.[89] The court rejected this argument, preferring the idea that the purposes of the provisions must be "intrinsically" linked, not merely "extrinsically" related.[90] The five million dollar rail appropriation, which represented "an indivisible sum of money dedicated to a stated purpose," sufficiently satisfied the separability test of *Dodson* to sustain the veto.[91]

IV. ANALYSIS

Before addressing the issue at the core of this analysis, which is the analytical framework through which the state line item veto should be interpreted by the courts, it is worth distinguishing the exercise of the item vetoes at the state and national levels, as mentioned in Part I. Despite the contemporaneity of *Drummond v. Beasley* and *Clinton v. City of New York*, the foundation for the decisions differed significantly. At the state level, the South Carolina Supreme Court addressed the Governor's interpretation and use of an existing power, contemplated by state framers and integrated into the legislative process through explicit constitutional procedures. At the national level, the United States Supreme Court faced an entirely new executive power which would fundamentally alter a legislative process[92] established by the

84. *Id.* at 241.
85. *Id.*
86. *Id.* at 240 (footnote omitted).
87. *Id.* at 241.
88. *Id.* at 242.
89. *Id.* at 243.
90. *Id.*
91. *Id.* at 243-44. Regarding the separability test, the court stated: "If it is clear from the appropriation bill that, with the disapproved provision eliminated, the approved appropriations cannot effectively serve their intended purposes, the attempted elimination is invalid." *Id.* at 244.
92. Proponents at the national level posit that granting the chief executive some budgetary control through the item veto would (1) "reduce wasteful spending," (2) "help balance the budget," and (3) "bring sunshine to the budget process." Alexis Simendinger, *The Line-Item Veto and a Quarter . . .*, 29 NAT'L J. 1384, 1384 (1997). Conversely, critics assert that the line item veto would be a political bargaining tool used to protect the executive's pet projects, that

Presentment Clause.[93] This potential change resulted from a statute extraneous to the text of the Constitution itself.[94]

Although drawing an analogy between governments at the state and national levels is tempting, the organization and structure of the two differ significantly. Many state governments are designed to facilitate coordination between the legislative and executive branches in formulating appropriations bills, and their budget procedures reflect this. For example, these bills are often organized in distinct sections or items to allow the Governor to assess separate provisions individually. Congressional spending bills are not submitted this way. The prevalence of state item vetoes also has led to a well-informed state judiciary that has managed to formulate "a coherent and principled approach to monitoring the scope of item veto power."[95] So when the courts address the item veto at the state level, they are considering a power fundamental to the functioning of the budget process. This stands in contrast to the national item veto, which is essentially a legislative effort to circumvent a constitutional process sometimes characterized by inefficiency and waste.[96]

Ideally, refinement of the line item veto at the state level should encourage fiscal discipline while minimizing the potential for abuse of power. In at least one state, part of the motivation for including the line item veto was to provide the Governor with a check over legislative excesses:

> [The line item veto's] purpose was to prevent, if possible, the adoption of omnibus appropriation bills, log-rolling, 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. Very definite evils were inherent in the law-making processes in connection with appropriation measures. Both the legislature and the people deemed it advisable to confer power upon the governor to approve appropriation bills in whole or in part . . . .[97]

On the other hand, chief executives are also prone to abusing the privileges

---

the projects cut would be relatively insignificant, and that the apparent placing of accountability would be masked by back-channel shenanigans. *See id.*

93. U.S. CONST. art. I, § 7, cl. 2.

94. *See* Clinton v. City of New York, 118 S. Ct. 2091, 2094 (1998).

95. Louis Fisher & Neal Devins, *How Successfully Can the States' Item Veto be Transferred to the President?*, 75 GEO. L.J. 159, 162 (1986).

96. *See generally* Simendinger, *supra* note 92, at 1384 (discussing the motivation behind the enactment of the national line item veto).

97. State *ex rel.* Martin v. Zimmerman, 289 N.W. 662, 664 (Wis. 1940).

granted them by their state charters. While the language quoted above focuses on the excesses of the legislature and the need to curb those excesses with an effective governor, the best check on the ambitions of the branches is a system in balance. That balance is ill-served by a dominant executive, as noted by the Supreme Court of New Mexico in *State ex rel. Sego v. Kirkpatrick*.[98] In that decision, the court emphasized that the Governor's veto authority was not "absolute" in the sense that it could be exercised free of "any restraint or limitation whatsoever."[99] A broad, unmitigated item veto would be inconsistent with a system based on checks and balances and "the fundamental principle that . . . no man is completely above the law."[100] If recent history is any guide, the balance of power at the state level rests largely on the shoulders of the courts, especially at a time when chief executives seem prone to testing the limits of their constitutional authority. Three basic, interconnected ideas consistently inform the decisions of the state courts. First is the definition of "item." The scope of the definition determines how exacting the governor may be in deleting portions of bills. Second is how strictly the principle of "severability" is enforced, which requires the deleted portion to be lifted from the bill cleanly and intact. The final consideration is whether the court philosophically separates the legislative function into creation and deletion for the legislature and governor, respectively. A governor who vetoes the most minute details of provisions inevitably passes from the negation of existing legislation into the formulation of new legislation, often adverse to the intent of the legislature. The balance of these ideas determines whether the center of government rests with the executive or with the legislature.

A. Defining "Item" Through Textual Interpretation

Whether the court interprets "item" broadly or narrowly significantly expands or limits the range of provisions a governor may strike. The courts of South Carolina and Iowa restrict the item veto to distinct provisions, forcing any excision to cover the entire measure.[101] In contrast, the Wisconsin court has given its Governor leeway to cross out measures contained within items, extending down to "phrases, digits, letters, and word fragments."[102] In between, the courts of Virginia limit that state's Governor's veto to distinct items, but they freely subdivide budget provisions to allow the elimination of component measures.[103] The adoption of various interpretations is constantly disputed among the three branches of government in many states. A source of

98. 524 P.2d 975 (N.M. 1974).
99. *Id.* at 978.
100. *Id.*
101. *See* Welden v. Ray, 229 N.W.2d 706, 713 (Iowa 1975); Drummond v. Beasley, 331 S.C. 559, 564, 503 S.E.2d 455, 457 (1998) (per curiam).
102. State *ex rel.* Wis. Senate v. Thompson, 424 N.W.2d 385, 386 (Wis. 1988).
103. *See* Brault v. Holleman, 230 S.E.2d 238, 243-44 (Va. 1976).

particular contention is whether a governor should be allowed to strike "not merely appropriation (dollar) items but substantive provisions as well," especially "when the legislature intends the substantive provision to act as a condition or qualification on the appropriated amount."[104]

Item is commonly defined as it relates to budget provisions within appropriations bills. Because these provisions often contain non-budgetary conditions and terms, courts are able to choose between making them intrinsic or extrinsic to the measure. An intrinsic term is intertwined with the rest of the section and does not stand as a separate vetoable unit. An extrinsic term stands alone and is subject to the governor's independent review. West Virginia distinguishes items based on the subjects they address, even where they contribute to a total appropriation: "'The term 'item' wherein it relates to the budget embraces a subject or purpose and an amount.'"[105] The court continued: "[A]n item may occur as a separate particular in an enumeration, account, or total, and may be any separate subject and amount within an account or total."[106]

Likewise, the Florida courts interpret an item as "'a separate entry in an account or a schedule, or a separate particular in an enumeration of a total which is separate and distinct from the other particulars or entries.'"[107]

> "Whenever the Legislature goes to the extent of saying . . . that a specified sum of money raised by taxation shall be spent for a specified purpose, and that alone, while other sums mentioned in the bill are to be used otherwise, no matter what language it may be disguised under, it is, nevertheless, within both the spirit and letter of the Constitution, an 'item' within the bill, and may be disapproved by the Governor without affecting any other items of appropriation contained therein."[108]

In *Dodson* the Virginia Supreme Court defined an "item" contained in an appropriation bill as "an indivisible sum of money dedicated to a stated purpose."[109] Importantly, the court includes "'language qualifying an appropriation, or directing the method of its use'" within the item, finding that the Governor "'exceeds the constitutional authority vested in him'" if he strikes

---

104. Fisher & Devins, *supra* note 95, at 166.

105. State *ex rel.* Brotherton v. Blankenship, 214 S.E.2d 467, 480 (W. Va. 1975) (quoting State *ex rel.* Brotherton v. Blankenship, 207 S.E.2d 421, 435 (W. Va. 1973)).

106. *Id.* at 481.

107. Green v. Rawls, 122 So. 2d 10, 15 (Fla. 1960) (per curiam) (quoting People *ex rel.* State Bd. of Agric. v. Brady, 115 N.E. 204, 207 (Ill. 1917)).

108. *Id.* at 16 (quoting Fairfield v. Foster, 214 P. 319, 323 (Ariz. 1923)).

109. Commonwealth v. Dodson, 11 S.E.2d 120, 127 (Va. 1940); *see also* Henry v. Edwards, 346 So. 2d 153, 157 (La. 1977) (defining "item" as "a sum of money dedicated to a specific purpose, a separate fiscal unit").

this language.[110] Finally, the *Drummond* decision held "[t]he vetoes of sentences, words and phrases does not meet the common sense construction of an item or section."[111] This finding, though in more general language, comports with the more precise definitions cited by the courts of Virginia,[112] West Virginia,[113] and Florida,[114] which would likely find such a selective veto as interfering with the stated purpose or enumeration of a particular provision. Contrarily, Wisconsin adheres to the exact opposite principle in *Thompson*, allowing its Governor to veto "words, letters and digits," though it based the decision on a construction of the word "part" rather than "item."[115]

B. Severability: The Item in Context

"Item" is sometimes best understood in terms of context. Courts often impose the condition of "severability" on governors' decisions, which requires that, after removal, the remaining bill retain no links to the severed piece. As expressed by the Virginia court, an item is "something which may be taken out of a bill without affecting its other purposes or provisions."[116] It must be "lifted" cleanly from the surrounding legislation, so "[n]o damage can be done to the surrounding legislative tissue, nor should any scar tissue result therefrom."[117] Antony R. Petrilla summarizes the concept as follows: "The section targeted by the item veto must be discrete and it must be expunged entirely. Its removal must not change the import of any of the remaining clauses in the legislation."[118]

The Wisconsin court notes that "[t]he power of the Governor to disassemble the law is coextensive with the power of the Legislature to assemble its provisions initially."[119] One purpose of the severability requirement is to facilitate the legislature's subsequent consideration of the vetoed items.[120] The affected bills must maintain a threshold level of coherence for this review and must not return to their legislatures fragmented or distorted. "[I]tems altered by veto should retain sufficient identity of subject or purpose and amount to permit intelligent review by the Legislature when it reconsiders veto actions of the Governor."[121] Similarly, the New Mexico Supreme Court

110. *Dodson*, 11 S.E.2d at 124 (quoting Bengzon v. Secretary of Justice, 299 U.S. 410, 414 (1937)).
111. Drummond v. Beasley, 331 S.C. 559, 564, 503 S.E.2d 455, 457 (1998) (per curiam).
112. *See supra* note 103.
113. *See supra* note 105.
114. *See supra* note 107.
115. State *ex rel.* Wis. Senate v. Thompson, 424 N.W.2d 385, 388 (Wis. 1988).
116. Commonwealth v. Dodson, 11 S.E.2d 120, 124 (Va. 1940).
117. *Id.*
118. Petrilla, *supra* note 2, at 502.
119. State *ex rel.* Kleczka v. Conta, 264 N.W.2d 539, 551 (Wis. 1978).
120. *See* State *ex rel.* Brotherton v. Blankenship, 214 S.E.2d 467, 484 (W. Va. 1975).
121. *Id.*

states that "a partial veto must be so exercised that it eliminates or destroys the whole of an item or part and does not distort the legislative intent, and in effect create legislation inconsistent with that enacted by the Legislature, by the careful striking of words, phrases, clauses or sentences."[122]

In *Brault v. Holleman*[123] the petitioners urged the court to address severability in its analysis of the Governor's vetoes of the rail portion of an omnibus transportation bill. They argued that the test should be whether "'the purpose of an appropriation amount that was vetoed [and] the purpose of an appropriation amount which was not vetoed'" were "'tied up'" with each other,[124] and, if so, the veto must be overturned. The salient issue in this case was whether the "'relationship between bus and rail mass transit in the [northern Virginia] area and between parking facilities at Metro rail stations and Metro rail lines'" was so "'considerable'" that the veto of the funding for Metro Rail would "affect seriously the appropriations for bus capital and parking facilities."[125] The court rejected this argument, concluding that "the relationship between purposes must appear intrinsically, rather than extrinsically."[126] According to the court's test, "[i]f it is clear from the appropriation bill that, with the disapproved provision eliminated, the approved appropriations cannot effectively serve their intended purposes, the attempted elimination is invalid."[127]

Beyond dollar appropriations, courts occasionally view conditions contained within items as being so intrinsic to the provision that their deletion compromises the whole. In *Rush v. Ray*[128] the Iowa Supreme Court turned back the Governor's attempt to shift funds by selectively removing certain qualifications, observing that "[t]he vetoed language created conditions, restricting use of the money to the stated purpose. It is not severable, because upon excision of this language, the rest of the legislation is affected."[129] Because removal of the conditions freed the money to be used for purposes other than the stated purpose, the conditions were not separate items susceptible to the Governor's veto.[130] Similarly, the Louisiana Supreme Court provides a simple test: "Conditions and limitations properly included in an appropriation bill must exhibit such a connexity with money items of appropriation that they logically belong in a schedule of expenditures."[131]

A clear example of a severable provision is a rider, which is essentially an

122. State *ex rel.* Sego v. Kirkpatrick, 524 P.2d 975, 981 (N.M. 1974).
123. 230 S.E.2d 238 (Va. 1976).
124. *Id.* at 243 (quoting the petitioners).
125. *Id.* (quoting the petitioners).
126. *Id.*
127. *Id.* at 244.
128. 362 N.W.2d 479 (Iowa 1985).
129. *Id.* at 482.
130. *Id.* at 482-83.
131. Henry v. Edwards, 346 So. 2d 153, 158 (La. 1977).

extraneous measure attached to a larger appropriation.[132] While noting that it had interpreted the Governor's item veto power strictly in past decisions, the Louisiana Supreme Court did not view the legislature's attempt to circumvent this power favorably:

> Just as the Governor may not use his item-veto power to usurp constitutional powers conferred on the legislature, neither can the legislature deprive the Governor of the constitutional powers conferred on him as the chief executive officer of the state by including in a general appropriation bill matters more properly enacted in separate legislation.... The legislature cannot by location of a bill give it immunity from executive veto. Nor can it circumvent the Governor's veto power over substantive legislation by artfully drafting general law measures so that they appear to be true conditions or limitations on an item of appropriation. . . . [W]hen the legislature inserts inappropriate provisions in a general appropriation bill, such provisions must be treated as "items" for purposes of the Governor's item veto power over general appropriation bills.[133]

In summary, severability allows governors to eliminate individual items from bills while requiring that the remaining provisions constitute viable legislation. Legislative attempts to bypass or challenge this authority by lumping unrelated provisions into one bill will likely be rejected by the courts in the face of an item veto. Above all, severability enforces the balance between participants in the passage of agreed-upon legislation.

C. Maintaining Functionality Through Negation, Not Creation

Just as the concept of "item" was intertwined with the notion of severability, the extent to which severability is recognized determines where on the creation/negation continuum a particular state's item veto fits. The more restrictive a state's veto has become through judicial interpretation, the more the governor is limited to a purely negative legislative role. However, if the power is applied flexibly to include "words, phrases, clauses or sentences,"[134] the edited legislation begins to assume a different character. In that case, the governor is using the legislature's product to create a new bill. In *Brault* the Virginia Governor transformed a comprehensive transportation bill into separate appropriations for various transportation services.[135] Similarly, the

132. *See* Colton v. Branstad, 372 N.W.2d 184, 191 (Iowa 1985).
133. *Henry*, 346 So. 2d at 157-58.
134. State *ex rel.* Sego v. Kirkpatrick, 524 P.2d 975, 981 (N.M. 1974).
135. *See* Brault v. Holleman, 230 S.E.2d 238, 244 (Va. 1976).

Wisconsin Supreme Court has allowed its Governor to convert a check-off provision for the state Election Campaign Fund into an obligation for the state's general fund.[136] Both maneuvers resulted in a significant reformation of the submitted bills, to the extent that the final products arguably were creations of those governors rather than modified versions of the mechanisms established by the legislatures. This is the philosophical leap which most characterizes whether the balance of power tilts toward the governor. The *Sego* court rejected this approach:

> 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. Thus, a partial veto must be so exercised that it eliminates or destroys the whole of an item or part and does not distort the legislative intent, and in effect create legislation inconsistent with that enacted by the Legislature, by the careful striking of words, phrases, clauses or sentences.[137]

Echoing the *Sego* court's reasoning, the Colorado Supreme Court rejected an attempt by Governor Richard Lamm to extend his veto authority beyond the bounds set by the state constitution.[138] In deciding *Colorado General Assembly v. Lamm*, the court recognized the executive's legislative authority derived from the veto. However, that authority is "merely a negative legislative power–it vests in the governor the authority to nullify, but not to create statutes."[139] Likewise, the Iowa Supreme Court struck the veto of a condition in *Rush v. Ray* because "[t]he veto distorted the obvious legislative intent that the funds only be spent for the appropriated purposes and created additional ways the funds might be spent. This was use of the veto power to create rather than negate."[140]

The Louisiana Supreme Court disallowed its Governor's elimination of conditions from a spending bill because the legislature possessed the power to include "qualifications, conditions, limitations or restrictions on the expenditure

---

136. *See* State *ex rel.* Kleczka v. Conta, 264 N.W.2d 539, 540-41 (Wis. 1978).

137. *Sego*, 524 P.2d at 981 (citations omitted).

138. *See* Colorado Gen. Assembly v. Lamm, 704 P.2d 1371 (Colo. 1985). According to the Colorado Constitution: "The governor shall have power to disapprove of any item or items of any bill making appropriations of money, embracing distinct items, and the part or parts of the bill approved shall be law, and the item or items disapproved shall be void, [unless overridden]." COLO. CONST. art IV, § 12.

139. *Lamm*, 704 P.2d at 1382-83.

140. Rush v. Ray, 362 N.W.2d 479, 483 (Iowa 1985).

of funds which would not be dealt with more properly in a separate bill."[141] To hold that the Governor could strike qualifications while leaving the appropriation intact would give the executive the ability "to alter and thus, in fact, to legislate by creating a new 'item' of appropriation wholly different in nature and purpose from that originated in the legislature."[142]

In contrast, the Wisconsin Supreme Court has consistently held a more radical view of the Governor's power. Disregarding most courts' hesitancy in tipping the balance of power toward the executive, the Wisconsin court asserted in *State ex rel. Kleczka v. Conta*[143] that "because the Governor's power to veto is coextensive with the legislature's power to enact laws initially, a governor's partial veto may, and usually will, change the policy of the law."[144] In *Kleczka*, despite the fact that the veto transformed the legislation "from that of encouraging add-ons to a taxpayer's personal liability to that of imposing a charge on the general fund," this "change of policy" fell within the Governor's constitutional authority "because his authority is coextensive with the authority of the Legislature to enact the policy initially."[145] In effect, the Wisconsin court has abandoned any restrictions based on creation/negation while adhering to the severability requirement.[146]

A subtle version of the power to create legislation arose during adjustments of the fiscal year 1991-92 Arizona budget.[147] By striking items from two bills amending the original budget, Governor Fife Symington effectively changed the allocated amount by causing it to revert back to its value in the original provision.[148] In a sense, this is creating legislation. However, the state supreme court held that the while the Governor could not "lin[e] out an item *and replac[e] it with his own, different amount*," he could veto an amendment that would change the amount through reversion.[149] In precise terms, the court explained:

> [W]e reject the argument that because the net effect of the Governor's vetoes is to *increase* state spending, those vetoes are per se invalid. Clearly, the net effect of the Governor's vetoes is to allow expenditures greater than those allowed under the Legislature's reduction plan. However, this is not

141. Henry v. Edwards, 346 So. 2d 153, 157 (La. 1977).
142. *Id.*
143. 264 N.W.2d 539 (Wis. 1978).
144. *Id.* at 552.
145. *Id.*
146. "Under the Wisconsin Constitution, the Governor may exercise his partial-veto power by removing provisos and conditions to an appropriation so long as the net result of the partial veto is a complete, entire, and workable bill which the legislature itself *could* have passed in the first instance." *Id.* at 555 (emphasis added).
147. Rios v. Symington, 833 P.2d 20 (Ariz. 1992) (en banc).
148. *Id.* at 27.
149. *Id.*

> a case . . . in which the Governor has *added* to an appropriation in the sense that he has vetoed an item and *replaced it with his own, higher amount.* Rather, the net effect of the Governor's veto is to reinstate the amount *originally appropriated by the Legislature.*[150]

In this special case, then, the Governor could create legislation as long as the modification had been specifically approved by the legislature in a previous bill. The effect was to give the Governor a choice between two amounts, which, while creative to a certain extent, limits the discretion with which an executive can reappropriate dollars.

The point of creation/negation is to temper the concept of severability, for while a provision within a bill may easily be extracted, if the remainder differs significantly from what the legislature originally intended, it will not stand. Creation/negation is perhaps most closely tied to the concept of separation of powers because, while it gives governors a role in the legislative process, it places a distinct limit on that role. Ultimately, the item veto is a check on legislative abuses more than it is a tool for gubernatorial lawmaking.[151]

V. CONCLUSION

The role of the courts is central to the balance of power between the branches as expressed through the line item veto. When courts interpret "item" broadly, when "severability" is narrowly enforced, and when the governor is given the power to create, the center of power shifts toward the executive. On the other hand, when the integrity of legislative budgets is protected by limiting the veto to clearly delineated items, the legislature maintains control over perhaps the greatest power wielded at the state level, the power of the purse. South Carolina has embraced a course favoring the General Assembly, maintaining for its Governor a legislative role, but limiting that role through a strict interpretation of Article IV, Section 21 of the South Carolina Constitution. This arms-length budgetary oversight, wielded prudently by the Governor and enforced consistently by the courts, is perhaps the state's greatest insurance that the legislature performs this crucial responsibly.

Winston David Holliday, Jr.

---

150. *Id.* at 28.

151. *See, e.g., id.* at 23 ("The framers of the Constitution thus established an additional executive check on the appropriation process, allowing the Executive to 'line out' items of appropriation to which he or she objects.").