118 S.Ct. 2091
Supreme Court of the United States

William J. CLINTON, President of the United States, et al., Appellants,
v.
CITY OF NEW YORK et al.

No. 97-1374. | Argued April 27, 1998. | Decided June 25, 1998.

City, health care providers, and unions, and farmers' cooperative and individual member, commenced separate actions challenging constitutionality of Line Item Veto Act after President exercised his authority under Act to cancel provisions of Balanced Budget Act and Taxpayer Relief Act. The United States District Court for the District of Columbia, Thomas F. Hogan, J., 985 F.Supp. 168, entered order holding that Line Item Veto Act was unconstitutional. On expedited appeal, the Supreme Court, Justice Stevens, held that Line Item Veto Act violated Presentment Clause by departing from "finely wrought" constitutional procedure for enactment of law.

Affirmed.

Justice Kennedy filed concurring opinion.

Justice Scalia filed opinion concurring in part and dissenting in part, which Justice O'Connor joined and Justice Breyer joined in part.

Justice Breyer filed dissenting opinion, which Justices O'Connor and Scalia joined in part.

West Headnotes (10)

[1] **Federal Courts**
Questions Not Presented Below

Challenge to whether jurisdiction was properly invoked under Line Item Veto Act, while not of constitutional magnitude, was not waived by failure to raise it in district court. Line Item Veto Act of 1996, § 3(a)(1), 2 U.S.C.A. § 692(a)(1).

6 Cases that cite this headnote

[2] **Declaratory Judgment**
Subjects of Relief in General

Line Item Veto Act's jurisdiction provision, in allowing any "individual" adversely affected to bring suit for declaratory or injunctive relief, did not limit relief to natural persons, to exclusion of corporate persons. Line Item Veto Act of 1996, § 3(a)(1), 2 U.S.C.A. § 692(a)(1).

25 Cases that cite this headnote

[3] **Constitutional Law**
Justiciability

Challenge to constitutionality of Line Item Veto Act presented justiciable controversy once President actually exercised line item veto, so long as challengers sustained actual injury as a result. U.S.C.A. Const. Art. 3, § 2, cl. 1; Line Item Veto Act of 1996, 2 U.S.C.A. § 691 et seq.
14 Cases that cite this headnote

[4] **Federal Civil Procedure**
In General; Injury or Interest
Federal Courts
Case or Controversy Requirement

Article III confines the jurisdiction of the federal courts to actual "Cases" and "Controversies," and doctrine of standing serves to identify those disputes which are appropriately resolved through the judicial process. U.S.C.A. Const. Art. 3, § 2, cl. 1.

38 Cases that cite this headnote

[5] **Constitutional Law**
Taxation

City and health care providers suffered sufficiently immediate and concrete injury when President exercised line item veto to cancel

waiver granted for certain state taxes levied against medicaid providers, and thereby denied relief from corresponding reduction in federal subsidies, to have standing to challenge constitutionality of Line Item Veto Act. Line Item Veto Act of 1996, 2 U.S.C.A. § 691 et seq.; Social Security Act, § 1905(b), 42 U.S.C.A. § 1396d(b).

26 Cases that cite this headnote

[6] **Constitutional Law**
Taxation

Farmers' cooperative suffered sufficiently immediate and concrete injury when President exercised line item veto to cancel tax deferral relief for sales of stock in food refiners and processors to cooperatives, and thereby cancelled that "bargaining chip," to have standing to challenge constitutionality of Line Item Veto Act, in light of cooperative's plans to use benefit of deferral to acquire certain facilities. Line Item Veto Act of 1996, 2 U.S.C.A. § 691 et seq.; 26 U.S.C.A. § 1042.

18 Cases that cite this headnote

[7] **Federal Civil Procedure**
In General; Injury or Interest
Federal Civil Procedure
Causation; Redressability

Once it is determined that a particular plaintiff is harmed by the defendant, and that the harm will likely be redressed by a favorable decision, that plaintiff has standing-regardless of whether there are others who would also have standing to sue.

31 Cases that cite this headnote

[8] **Statutes**
Presentation to Executive
Statutes
Disapproval of Portion of Bill

President's exercise of power under Line Item Veto Act to cancel item of new direct spending and item of limited tax benefit violated Presentment Clause by departing from "finely wrought" constitutional procedure for enactment of law, to extent President's action had both legal and practical effect of amending acts of Congress by repealing portions thereof, and did not come within his constitutional veto power. U.S.C.A. Const. Art. 1, § 7, cl. 2; Line Item Veto Act of 1996, 2 U.S.C.A. § 691 et seq.
22 Cases that cite this headnote

[9] **Statutes**
Presentation to Executive
Statutes
Disapproval of Portion of Bill

President's exercise of power under Line Item Veto Act to cancel item of new direct spending and item of limited tax benefit was not mere exercise of discretionary authority granted to the President under acts of Congress affected by his actions, such that there would be no violation of Presentment Clause. U.S.C.A. Const. Art. 1, § 7, cl. 2; Line Item Veto Act of 1996, 2 U.S.C.A. § 691 et seq.
9 Cases that cite this headnote

[10] **Statutes**
Presentation to Executive
Statutes
Disapproval of Portion of Bill

President's exercise of power under Line Item Veto Act to cancel item of new direct spending and item of limited tax benefit was not merely consistent with his traditional authority to decline to spend appropriated funds, such that there would be no violation of Presentment Clause. U.S.C.A. Const. Art. 1, § 7, cl. 2; Line Item Veto Act of 1996, 2 U.S.C.A. § 691 et seq.
8 Cases that cite this headnote

****2092 *417 *Syllabus**

Last Term, this Court determined on expedited review that Members of Congress did not have standing to maintain a constitutional challenge to the Line Item Veto Act (Act), 2 U.S.C. § 691 *et seq.,* because they had not alleged a sufficiently concrete injury. *Raines v. Byrd,* 521 U.S. 811, 117 S.Ct. 2312, 138 L.Ed.2d 849. Within two months, the President exercised his authority under the Act by canceling § 4722(c) of the Balanced Budget Act of 1997, which waived the Federal Government's statutory right to recoupment of as much as $2.6 billion in taxes that the State of New York had levied against Medicaid providers, and § 968 of the Taxpayer Relief Act of 1997, which permitted the owners of certain food refiners and processors to defer recognition of capital gains if they sold their stock to eligible farmers' cooperatives. Appellees, claiming they had been injured, filed separate actions against the President and other officials challenging the cancellations. The plaintiffs in the first case are the City of New York, two hospital associations, one hospital, and two unions representing health care employees. The plaintiffs in the second are the Snake River farmers' cooperative and one of its individual members. The District Court consolidated the cases, determined that at least one of the plaintiffs in each had standing under Article III, and ruled, *inter alia,* that the Act's cancellation procedures violate the Presentment Clause, Art. I, § 7, cl. 2. This Court again expedited its review.

Held:

1. The appellees have standing to challenge the Act's constitutionality. They invoked the District Court's jurisdiction under a section entitled "Expedited review," which, among other things, expressly authorizes "any individual adversely affected" to bring a constitutional challenge. § 692(a)(1). The ****2093** Government's argument that none of them except the individual Snake River member is an "individual" within § 692(a)(1)'s meaning is rejected because, in the context of the entire section, it is clear that Congress meant that word to be construed broadly to include corporations and other entities. The Court is also unpersuaded by the Government's argument that appellees' challenge is nonjusticiable. These cases differ from *Raines,* not only because the President's exercise of his cancellation authority has removed any concern ***418** about the dispute's ripeness, but more importantly because the parties have alleged a "personal stake" in having an actual injury redressed, rather than an "institutional injury" that is "abstract and widely dispersed." 521 U.S., at 829, 117 S.Ct., at 2322. There is no merit to the Government's contention that, in both cases, the appellees have not suffered actual injury because their claims are too speculative and, in any event, are advanced by the wrong parties. Because New York State now has a multibillion dollar contingent liability that had been eliminated by § 4722(c), the State, and the appellees, suffered an immediate, concrete injury the moment the President canceled the section and deprived them of its benefits. The argument that New York's claim belongs to the State, not appellees, fails in light of New York statutes demonstrating that both New York City and the appellee providers will be assessed for substantial portions of any recoupment payments the State has to make. Similarly, the President's cancellation of § 968 inflicted a sufficient likelihood of economic injury on the Snake River appellees to establish standing under this Court's precedents, cf. *Bryant v. Yellen,* 447 U.S. 352, 368, 100 S.Ct. 2232, 2241, 65 L.Ed.2d 184. The assertion that, because processing facility sellers would have received the tax benefits, only they have standing to challenge the § 968 cancellation not only ignores the fact that the cooperatives were the intended beneficiaries of § 968, but also overlooks the fact that more than one party may be harmed by a defendant and therefore have standing. Pp. 2098-2102.

2. The Act's cancellation procedures violate the Presentment Clause. Pp. 2102-2108.

(a) The Act empowers the President to cancel an "item of new direct spending" such as § 4722(c) of the Balanced Budget Act and a "limited tax benefit" such as § 968 of the Taxpayer Relief Act, § 691(a), specifying that such cancellation prevents a provision "from having legal force or effect," §§ 691e(4)(B)-(C). Thus, in both legal and practical effect, the Presidential actions at issue have amended two Acts of Congress by repealing a portion of each. Statutory repeals must conform with Art. I, *INS v. Chadha,* 462 U.S. 919, 954, 103 S.Ct. 2764, 2785-2786, 77 L.Ed.2d 317, but there is no constitutional authorization for the President to amend or repeal. Under the Presentment Clause, after a bill has passed both Houses, but "before it become [s] a Law," it must be presented to the President, who "shall sign it" if he approves it, but "return it," *i.e.,* "veto" it, if he does not. There are important differences between such a "return" and cancellation under the Act: The constitutional return is of the entire bill and takes place *before* it becomes law, whereas the statutory cancellation occurs *after* the bill becomes law and affects it only in part. There are powerful reasons for construing the constitutional silence on the profoundly important subject of Presidential repeals as equivalent to an express ***419** prohibition. The Article I procedures governing statutory enactment were the product of the great debates and compromises that produced the Constitution itself. Familiar historical materials provide abundant support for the conclusion that the power to enact statutes may only "be exercised in

accord with a single, finely wrought and exhaustively considered, procedure." *Chadha,* 462 U.S., at 951, 103 S.Ct., at 2784. What has emerged in the present cases, however, are not the product of the "finely wrought" procedure that the Framers designed, but truncated versions of two bills that passed both Houses. Pp. 2102-2105.

(b) The Court rejects two related Government arguments. First, the contention that the cancellations were merely exercises of the President's discretionary authority under the Balanced Budget Act and the Taxpayer Relief Act, read in light of the ****2094** previously enacted Line Item Veto Act, is unpersuasive. *Field v. Clark,* 143 U.S. 649, 693, 12 S.Ct. 495, 504-505, 36 L.Ed. 294, on which the Government relies, suggests critical differences between this cancellation power and the President's statutory power to suspend import duty exemptions that was there upheld: such suspension was contingent on a condition that did not predate its statute, the duty to suspend was absolute once the President determined the contingency had arisen, and the suspension executed congressional policy. In contrast, the Act at issue authorizes the President himself to effect the repeal of laws, for his own policy reasons, without observing Article I, § 7, procedures. Second, the contention that the cancellation authority is no greater than the President's traditional statutory authority to decline to spend appropriated funds or to implement specified tax measures fails because this Act, unlike the earlier laws, gives the President the unilateral power to change the text of duly enacted statutes. Pp. 2105-2107.

(c) The profound importance of these cases makes it appropriate to emphasize three points. First, the Court expresses no opinion about the wisdom of the Act's procedures and does not lightly conclude that the actions of the Congress that passed it, and the President who signed it into law, were unconstitutional. The Court has, however, twice had full argument and briefing on the question and has concluded that its duty is clear. Second, having concluded that the Act's cancellation provisions violate Article I, § 7, the Court finds it unnecessary to consider the District Court's alternative holding that the Act impermissibly disrupts the balance of powers among the three branches of Government. Third, this decision rests on the narrow ground that the Act's procedures are not authorized by the Constitution. If this Act were valid, it would authorize the President to create a law whose text was not voted on by either House or presented to the President for signature. That may or may not be desirable, but it is surely not a document that may "become a law" pursuant to Article I, § 7. If there is to be a new procedurein ***420** which the President will play a different role, such change must come through the Article V amendment procedures. Pp. 2107-2108.

985 F.Supp. 168, affirmed.

STEVENS, J., delivered the opinion of the Court, in which REHNQUIST, C.J., and KENNEDY, SOUTER, THOMAS, and GINSBURG, JJ., joined. KENNEDY, J., filed a concurring opinion, *post,* p. 2108. SCALIA, J., filed an opinion concurring in part and dissenting in part, in which O'CONNOR, J., joined, and in which BREYER, J., joined as to Part III, *post,* p. 2110. BREYER, J., filed a dissenting opinion, in which O'CONNOR and SCALIA, JJ., joined as to Part III, *post,* p. 2118.

Attorneys and Law Firms

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Opinion

Justice STEVENS delivered the opinion of the Court.

The Line Item Veto Act (Act), 110 Stat. 1200, 2 U.S.C. § 691 *et seq.* (1994 ed., Supp. II), was enacted in April 1996 ***421** and became effective on January 1, 1997. The following day, six Members of Congress who had voted against the Act brought suit in the District Court for the District of Columbia challenging its constitutionality. On April 10, 1997, the District Court entered an order holding that the Act is unconstitutional. *Byrd v. Raines,* 956 F.Supp. 25 (D.D.C.1997). In obedience to the statutory direction to allow a direct, expedited appeal to this Court, see §§ 692(b)-(c), we promptly noted probable jurisdiction and expedited review, 520 U.S. 1194, 117 S.Ct. 1489, 137 L.Ed.2d 699 (1997). We determined, however, that the Members of Congress did not have standing to sue because they had not "alleged a sufficiently ****2095** concrete injury to have established Article III standing," *Raines v. Byrd,* 521 U.S. 811, 830, 117 S.Ct. 2312, 2322, 138 L.Ed.2d 849 (1997); thus, "[i]n ... light of [the] overriding and time-honored concern about keeping the Judiciary's power within its proper constitutional sphere," *id.,* at 820, 117 S.Ct., at 2318, we remanded the case to the District Court with instructions to dismiss the complaint for lack of jurisdiction.

Less than two months after our decision in that case, the President exercised his authority to cancel one provision

in the Balanced Budget Act of 1997, Pub.L. 105-33, 111 Stat. 251, 515, and two provisions in the Taxpayer Relief Act of 1997, Pub.L. 105-34, 111 Stat. 788, 895-896, 990-993. Appellees, claiming that they had been injured by two of those cancellations, filed these cases in the District Court. That Court again held the statute invalid, 985 F.Supp. 168, 177-182 (1998), and we again expedited our review, 522 U.S. 1144, 118 S.Ct. 1123, 140 L.Ed.2d 172 (1998). We now hold that these appellees have standing to challenge the constitutionality of the Act and, reaching the merits, we agree that the cancellation procedures set forth in the Act violate the Presentment Clause, Art. I, § 7, cl. 2, of the Constitution.

I

We begin by reviewing the canceled items that are at issue in these cases.

*422 *Section 4722(c) of the Balanced Budget Act*

Title XIX of the Social Security Act, 79 Stat. 343, as amended, authorizes the Federal Government to transfer huge sums of money to the States to help finance medical care for the indigent. See 42 U.S.C. § 1396d(b). In 1991, Congress directed that those federal subsidies be reduced by the amount of certain taxes levied by the States on health care providers.[1] In 1994, the Department of Health and Human Services (HHS) notified the State of New York that 15 of its taxes were covered by the 1991 Act, and that as of June 30, 1994, the statute therefore required New York to return $955 million to the United States. The notice advised the State that it could apply for a waiver on certain statutory grounds. New York did request a waiver for those tax programs, as well as for a number of others, but HHS has not formally acted on any of those waiver requests. New York has estimated that the amount at issue for the period from October 1992 through March 1997 is as high as $2.6 billion.

Because HHS had not taken any action on the waiver requests, New York turned to Congress for relief. On August 5, 1997, Congress enacted a law that resolved the issue in New York's favor. Section 4722(c) of the Balanced Budget Act of 1997 identifies the disputed taxes and provides that they "are deemed to be permissible health care related taxes and in compliance with the requirements" of the relevant provisions of the 1991 statute.[2]

***423** On August 11, 1997, the President sent identical notices to the Senate and to the House of Representatives canceling "one item of new direct spending," specifying § 4722(c) as that item, and stating that he had determined that "this cancellation will reduce the Federal budget deficit." He explained that § 4722(c) would have permitted New York "to continue relying upon impermissible provider taxes to finance its Medicaid program" and that "[t]his preferential treatment would have increased Medicaid ****2096** costs, would have treated New York differently from all other States, and would have established a costly precedent for other States to request comparable treatment."[3]

Section 968 of the Taxpayer Relief Act of 1977

A person who realizes a profit from the sale of securities is generally subject to a capital gains tax. Under existing law, however, an ordinary business corporation can acquire a corporation, including a food processing or refining company, in a merger or stock-for-stock transaction in which no gain is recognized to the seller, see 26 U.S.C. §§ 354(a), 368(a); the seller's tax payment, therefore, is deferred. If, however, the purchaser is a farmers' cooperative, the parties cannot structure such a transaction because the stock of the cooperative may be held only by its members, see § 521(b)(2); thus, a seller dealing with a farmers' cooperative cannot obtain the benefits of tax deferral.

***424** In § 968 of the Taxpayer Relief Act of 1997, Congress amended § 1042 of the Internal Revenue Code to permit owners of certain food refiners and processors to defer the recognition of gain if they sell their stock to eligible farmers' cooperatives.[4] The purpose of the amendment, as repeatedly explained by its sponsors, was "to facilitate the transfer of refiners and processors to farmers' cooperatives."[5] The ***425** amendment to § 1042 was one of the 79 "limited tax benefits" authorized by the Taxpayer Relief Act of 1997 and specifically identified in Title XVII of that Act as "subject to [the] line item veto."[6] On the same date that he canceled the "item of new direct spending" involving New York's health care programs, the President also canceled this limited tax benefit. In his explanation of that action, the President endorsed the objective of encouraging "value-added farming through the purchase by farmers' cooperatives of refiners or processors of agricultural goods,"[7] but concluded that the provision lacked safeguards and also "failed to target its benefits to small- ****2097** and-medium-size cooperatives."[8]

II

Appellees filed two separate actions against the President[9]

. In that case, we considered whether a rule that generally limited water deliveries from reclamation projects to 160 acres applied to the much larger tracts of the Imperial Irrigation District in southeastern California; application of that limitation would have given large landowners an incentive to sell excess lands at prices below the prevailing market price for irrigated land. The District Court had held that the 160-acre limitation did not apply, and farmers who had hoped to purchase the excess land sought to appeal. We acknowledged that the farmers had not presented "detailed information about [their] financial resources," and noted that "the prospect of windfall profits could attract a large number of potential purchasers" besides the farmers. *Id.,* at 367, n. 17, 100 S.Ct., at 2241, n. 17. Nonetheless, "even though they could not with certainty establish that they would be able to purchase excess lands" if the judgment were reversed, *id.,* at 367, 100 S.Ct., at 2241, we found standing because it ****2101** was "likely that excess lands would become available at less than market prices," *id.,* at 368, 100 S.Ct., at 2241. The Snake River appellees have alleged an injury that is as specific and immediate as that in *Yellen.* See also *Duke Power Co. v. Carolina Environmental Study Group, Inc.,* 438 U.S. 59, 72-78, 98 S.Ct. 2620, 2629-2633, 57 L.Ed.2d 595 (1978).22

[7] ***434** As with the New York case, the Government argues that the wrong parties are before the Court-that because the sellers of the processing facilities would have received the tax benefits, only they have standing to challenge the cancellation of § 968. This argument not only ignores the fact that the cooperatives were the intended beneficiaries of § 968, but also overlooks the self-evident proposition that more than one party may have standing to challenge a particular action or inaction.23 Once it is determined that a particular plaintiff ***435** is harmed ****2102** by the defendant, and that the harm will likely be redressed by a favorable decision, that plaintiff has standing-regardless of whether there are others who would ***436** also have standing to sue. Thus, we are satisfied that both of these actions are Article III "Cases" that we have a duty to decide.

IV

[8] The Line Item Veto Act gives the President the power to "cancel in whole" three types of provisions that have been signed into law: "(1) any dollar amount of discretionary budget authority; (2) any item of new direct spending; or (3) any limited tax benefit." 2 U.S.C. § 691(a) (1994 ed., Supp. II). It is undisputed that the New York case involves an "item of new direct spending" and that the Snake River case involves a "limited tax benefit" as those terms are defined in the Act. It is also undisputed that each of those provisions had been signed into law pursuant to Article I, § 7, of the Constitution before it was canceled.

The Act requires the President to adhere to precise procedures whenever he exercises his cancellation authority. In identifying items for cancellation he must consider the legislative history, the purposes, and other relevant information about the items. See 2 U.S.C. § 691(b) (1994 ed., Supp. II). He must determine, with respect to each cancellation, that it will "(i) reduce the Federal budget deficit; (ii) not impair any essential Government functions; and (iii) not harm the national interest." § 691(a)(3)(A). Moreover, he must transmit a special message to Congress notifying it of each cancellation within five calendar days (excluding Sundays) after the enactment of the canceled provision. See § 691(a)(3)(B). It is undisputed that the President meticulously followed these procedures in these cases.

A cancellation takes effect upon receipt by Congress of the special message from the President. See § 691b(a). If, however, a "disapproval bill" pertaining to a special message is enacted into law, the cancellations set forth in that message become "null and void." *Ibid.* The Act sets forth a detailed expedited procedure for the consideration of a "disapproval bill," see § 691d, but no such bill was passed for ***437** either of the cancellations involved in these cases.24 A majority vote of both Houses is sufficient to enact a disapproval bill. The Act does not grant the President the authority to cancel a disapproval bill, see § 691(c), but he does, of course, retain his constitutional authority to veto such a bill.25

The effect of a cancellation is plainly stated in § 691e, which defines the principal terms used in the Act. With respect to both an item of new direct spending and a limited tax benefit, the cancellation prevents the item "from having legal force or effect." §§ 691e(4)(B)-(C).26 Thus, under the ****2103** ***438** plain text of the statute, the two actions of the President that are challenged in these cases prevented one section of the Balanced Budget Act of 1997 and one section of the Taxpayer Relief Act of 1997 "from having legal force or effect." The remaining provisions of those statutes, with the exception of the second canceled item in the latter, continue to have the same force and effect as they had when signed into law.

In both legal and practical effect, the President has amended two Acts of Congress by repealing a portion of each. "[R]epeal of statutes, no less than enactment, must conform with Art. I." *INS v. Chadha,* 462 U.S. 919, 954, 103 S.Ct. 2764, 2785-2786, 77 L.Ed.2d 317 (1983). There is no provision in the Constitution that authorizes the

President to enact, to amend, or to repeal statutes. Both Article I and Article II assign responsibilities to the President that directly relate to the lawmaking process, but neither addresses the issue presented by these cases. The President "shall from time to time give to the Congress Information on the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient ...." Art. II, § 3. Thus, he may initiate and influence legislative proposals.[27] Moreover, after a bill has passed both Houses of Congress, but "before it become[s] a Law," it must be presented to the President. If he approves it, "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." Art. I, § 7, cl. 2.[28] His ***439** "return" of a bill, which is usually described as a "veto,"[29] is subject to being overridden by a two-thirds vote in each House.

There are important differences between the President's "return" of a bill pursuant to Article I, § 7, and the exercise of the President's cancellation authority pursuant to the Line Item Veto Act. The constitutional return takes place *before* the bill becomes law; the statutory cancellation occurs *after* the bill becomes law. The constitutional return is of the entire bill; the statutory cancellation is of only a part. Although the Constitution expressly authorizes the President to play a role in the process of enacting statutes, it is silent on the subject of unilateral Presidential action that either repeals or amends parts of duly enacted statutes.

There are powerful reasons for construing constitutional silence on this profoundly important issue as equivalent to an express prohibition. The procedures governing the enactment of statutes set forth in the text of Article I were the product of the great debates and compromises that produced the Constitution itself. Familiar historical materials ****2104** provide abundant support for the conclusion that the power to enact statutes may only "be exercised in accord with a single, finely wrought and exhaustively considered, ***440** procedure." *Chadha,* 462 U.S., at 951, 103 S.Ct., at 2784. Our first President understood the text of the Presentment Clause as requiring that he either "approve all the parts of a Bill, or reject it in toto."[30] What has emerged in these cases from the President's exercise of his statutory cancellation powers, however, are truncated versions of two bills that passed both Houses of Congress. They are not the product of the "finely wrought" procedure that the Framers designed.

At oral argument, the Government suggested that the cancellations at issue in these cases do not effect a "repeal" of the canceled items because under the special "lockbox" provisions of the Act,[31] a canceled item "retain[s] real, legal ***441** budgetary effect" insofar as it prevents Congress and the President from spending the savings that result from the cancellation. Tr. of Oral Arg. 10.[32] The text of the Act expressly provides, however, that a cancellation prevents a direct spending or tax benefit provision "from having legal force or effect." 2 U.S.C. §§ 691e(4)(B)-(C). That a canceled item may have "real, legal budgetary effect" as a result of the lockbox procedure does not change the fact that by canceling the items at issue in these cases, the President made them entirely inoperative as to appellees. Section 968 of the Taxpayer Relief Act no longer provides a tax benefit, and § 4722(c) of the Balanced Budget Act of 1997 no longer relieves New York of its contingent liability.[33] Such significant changes do not lose their character simply because the canceled provisions may have some continuing financial effect on the Government.[34] The cancellation of one section of ****2105** a statute may be the functional equivalent of a partial repeal even if a portion of the section is not canceled.

***442 V**

[9] The Government advances two related arguments to support its position that despite the unambiguous provisions of the Act, cancellations do not amend or repeal properly enacted statutes in violation of the Presentment Clause. First, relying primarily on *Field v. Clark,* 143 U.S. 649, 12 S.Ct. 495, 36 L.Ed. 294 (1892), the Government contends that the cancellations were merely exercises of discretionary authority granted to the President by the Balanced Budget Act and the Taxpayer Relief Act read in light of the previously enacted Line Item Veto Act. Second, the Government submits that the substance of the authority to cancel tax and spending items "is, in practical effect, no more and no less than the power to 'decline to spend' specified sums of money, or to 'decline to implement' specified tax measures." Brief for Appellants 40. Neither argument is persuasive.

In *Field v. Clark,* the Court upheld the constitutionality of the Tariff Act of 1890. Act of Oct. 1, 1890, 26 Stat. 567. That statute contained a "free list" of almost 300 specific articles that were exempted from import duties "unless otherwise specially provided for in this act." *Id.,* at 602. Section 3 was a special provision that directed the President to suspend that exemption for sugar, molasses, coffee, tea, and hides "whenever, and so often" as he should be satisfied that any country producing and exporting those products imposed duties on the agricultural products of the United States that he deemed to be "reciprocally unequal and unreasonable ..." *Id.,* at

612, quoted in *Field,* 143 U.S., at 680, 12 S.Ct., at 500. The section then specified the duties to be imposed on those products during any such suspension. The Court provided this explanation for its conclusion that § 3 had not delegated legislative power to the President:

> "Nothing involving the expediency or the just operation of such legislation was left to the determination of the President.... [W]hen he ascertained the fact that duties ***443** and exactions, reciprocally unequal and unreasonable, were imposed upon the agricultural or other products of the United States by a country producing and exporting sugar, molasses, coffee, tea or hides, it became his duty to issue a proclamation declaring the suspension, as to that country, which Congress had determined should occur. He had no discretion in the premises except in respect to the duration of the suspension so ordered. But that related only to the enforcement of the policy established by Congress. As the suspension was absolutely required when the President ascertained the existence of a particular fact, it cannot be said that in ascertaining that fact and in issuing his proclamation, in obedience to the legislative will, he exercised the function of making laws.... It was a part of the law itself as it left the hands of Congress that the provisions, full and complete in themselves, permitting the free introduction of sugars, molasses, coffee, tea and hides, from particular countries, should be suspended, in a given contingency, and that in case of such suspensions certain duties should be imposed." *Id.,* at 693, 12 S.Ct., at 504-505.

This passage identifies three critical differences between the power to suspend the exemption from import duties and the power to cancel portions of a duly enacted statute. First, the exercise of the suspension power was contingent upon a condition that did not exist when the Tariff Act was passed: the imposition of "reciprocally unequal and unreasonable" import duties by other countries. In contrast, the exercise of the cancellation power within five days after the enactment of the Balanced Budget and Tax Reform Acts necessarily was based on the same conditions that Congress evaluated when it passed those statutes. Second, under the Tariff Act, when the President determined that the contingency had arisen, he had a duty to suspend; in contrast, while it is true that the President was required by the Act to make three determinations before he canceled a provision, see ***444** 2 U.S.C. § 691(a)(A) (1994 ed., Supp. II), those determinations did not qualify his discretion to cancel or not to ****2106** cancel. Finally, whenever the President suspended an exemption under the Tariff Act, he was executing the policy that Congress had embodied in the statute. In contrast, whenever the President cancels an item of new direct spending or a limited tax benefit he is rejecting the policy judgment made by Congress and relying on his own policy judgment.[35] Thus, the conclusion in *Field v. Clark* that the suspensions mandated by the Tariff Act were not exercises of legislative power does not undermine our opinion that cancellations pursuant to the Line Item Veto Act are the functional equivalent of partial repeals of Acts of Congress that fail to satisfy Article I, § 7.

The Government's reliance upon other tariff and import statutes, discussed in *Field,* that contain provisions similar to the one challenged in *Field* is unavailing for the same reasons.[36] Some of those statutes authorized the President to "suspen[d] and discontinu[e]" statutory duties upon his determination that discriminatory duties imposed by other nations had been abolished. See 143 U.S., at 686-687, 12 S.Ct., at 502-503 (discussing Act of Jan. 7, 1824, ch. 4, § 4, 4 Stat. 3, and Act of May 24, 1828, ch. 111, 4 Stat. 308).[37] A slightly different statute, ***445** Act of May 31, 1830, ch. 219, § 2, 4 Stat. 425, provided that certain statutory provisions imposing duties on foreign ships "shall be repealed" upon the same no-discrimination determination by the President. See 143 U.S., at 687, 12 S.Ct., at 503; see also *id.,* at 686, 12 S.Ct., at 502-503 (discussing similar tariff statute, Act of Mar. 3, 1815, ch. 77, 3 Stat. 224, which provided that duties "are hereby repealed," "[s]uch repeal to take effect ... whenever the President" makes the required determination).

The cited statutes all relate to foreign trade, and this Court has recognized that in the foreign affairs arena, the President has "a degree of discretion and freedom from statutory restriction which would not be admissible were domestic affairs alone involved." *United States v. Curtiss-Wright Export Corp.,* 299 U.S. 304, 320, 57 S.Ct. 216, 221, 81 L.Ed. 255 (1936). "Moreover, he, not Congress, has the better opportunity of knowing the conditions which prevail in foreign countries." *Ibid.*[38] More important, when enacting the statutes discussed in *Field,* Congress itself made the decision to suspend or repeal the particular provisions at issue upon the occurrence of particular events subsequent to enactment, and it left only the determination of whether such events occurred up to the President.[39] The Line Item Veto Act authorizes the President himself to effect the repeal of laws, for his own policy reasons, without observing the procedures set out in Article I, § 7. The fact that Congress intended such a result is of no ****2107 *446** moment. Although Congress presumably anticipated that the President might cancel some of the items in the Balanced Budget Act and in the Taxpayer Relief Act, Congress cannot alter the procedures set out in Article I, § 7, without amending the Constitution.[40]

[10] Neither are we persuaded by the Government's contention that the President's authority to cancel new direct spending and tax benefit items is no greater than his

traditional authority to decline to spend appropriated funds. The Government has reviewed in some detail the series of statutes in which Congress has given the Executive broad discretion over the expenditure of appropriated funds. For example, the First Congress appropriated "sum[s] not exceeding" specified amounts to be spent on various Government operations. See, *e.g.,* Act of Sept. 29, 1789, ch. 23, § 1, 1 Stat. 95; Act of Mar. 26, 1790, ch. 4, 1 Stat. 104; Act of Feb. 11, 1791, ch. 6, 1 Stat. 190. In those statutes, as in later years, the President was given wide discretion with respect to both the amounts to be spent and how the money would be allocated among different functions. It is argued that the Line Item Veto Act merely confers comparable discretionary authority over the expenditure of appropriated funds. The critical ***447** difference between this statute and all of its predecessors, however, is that unlike any of them, this Act gives the President the unilateral power to change the text of duly enacted statutes. None of the Act's predecessors could even arguably have been construed to authorize such a change.

VI

Although they are implicit in what we have already written, the profound importance of these cases makes it appropriate to emphasize three points.

First, we express no opinion about the wisdom of the procedures authorized by the Line Item Veto Act. Many members of both major political parties who have served in the Legislative and the Executive Branches have long advocated the enactment of such procedures for the purpose of "ensur[ing] greater fiscal accountability in Washington." H.R. Conf. Rep. 104-491, p. 15 (1996).[41] The text of the Act was itself the product of much debate and deliberation in both Houses of Congress and that precise text was signed into law by the President. We do not lightly conclude that their action was unauthorized by the Constitution.[42] We have, however, twice had full argument and briefing on the question and have concluded that our duty is clear.

Second, although appellees challenge the validity of the Act on alternative grounds, the only issue we address concerns the "finely wrought" procedure commanded by the Constitution. *Chadha,* 462 U.S., at 951, 103 S.Ct., at 2784. We have been ***448** favored with extensive debate about the scope of ****2108** Congress' power to delegate lawmaking authority, or its functional equivalent, to the President. The excellent briefs filed by the parties and their *amici curiae* have provided us with valuable historical information that illuminates the delegation issue but does not really bear on the narrow issue that is dispositive of these cases. Thus, because we conclude that the Act's cancellation provisions violate Article I, § 7, of the Constitution, we find it unnecessary to consider the District Court's alternative holding that the Act "impermissibly disrupts the balance of powers among the three branches of government." 985 F.Supp., at 179.[43]

Third, our decision rests on the narrow ground that the procedures authorized by the Line Item Veto Act are not authorized by the Constitution. The Balanced Budget Act of 1997 is a 500-page document that became "Public Law 105-33" after three procedural steps were taken: (1) a bill containing its exact text was approved by a majority of the Members of the House of Representatives; (2) the Senate approved precisely the same text; and (3) that text was signed into law by the President. The Constitution explicitly requires that each of those three steps be taken before a bill may "become a law." Art. I, § 7. If one paragraph of that text had been omitted at any one of those three stages, Public Law 105-33 would not have been validly enacted. If the Line Item Veto Act were valid, it would authorize the President to create a different law-one whose text was not voted on by either House of Congress or presented to the President for signature. Something that might be known as "Public Law 105-33 as modified by the President" may or ***449** may not be desirable, but it is surely not a document that may "become a law" pursuant to the procedures designed by the Framers of Article I, § 7, of the Constitution.

If there is to be a new procedure in which the President will play a different role in determining the final text of what may "become a law," such change must come not by legislation but through the amendment procedures set forth in Article V of the Constitution. Cf. *U.S. Term Limits, Inc. v. Thornton,* 514 U.S. 779, 837, 115 S.Ct. 1842, 1871, 131 L.Ed.2d 881 (1995).

The judgment of the District Court is affirmed.

It is so ordered.

Justice KENNEDY, concurring.

A Nation cannot plunder its own treasury without putting its Constitution and its survival in peril. The statute before us, then, is of first importance, for it seems undeniable the Act will tend to restrain persistent excessive spending. Nevertheless, for the reasons given by Justice STEVENS in the opinion for the Court, the statute must be found invalid. Failure of political will does not justify unconstitutional remedies.