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(FORM UPDATED: 08/11/2010)

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2007-08

(session year)

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(Assembly, Senate or Joint)

Committee on ... Elections and Constitutional Law
(AC-ECL)

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* Contents organized for archiving by: Mike Barman (LRB) (Aug/2010)

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Wisconsin Legislative
Reference Bureau
100 N. Hamilton St.
P.O. Box 2037
Madison, WI. 53701-2037

THE WISCONSIN PARTIAL VETO: PAST, PRESENT AND FUTURE

by

Mary E. Burke

WI law rev.v.1989,no.6

COMMENTS

THE WISCONSIN PARTIAL VETO: PAST, PRESENT AND FUTURE

A 1930 amendment to the Wisconsin Constitution authorized state governors to veto "parts" of appropriation bills. Since then, litigation, attempted constitutional amendments efforts and opinions issued by the state attorney general have attempted to define, expand, or restrict the scope of the partial veto authority.

In 1988, the Wisconsin Supreme Court affirmed the authority of Wisconsin governors to veto "parts" of appropriation bills as small as single digits and individual letters. The Wisconsin Legislature subsequently authorized another state constitutional amendment prohibiting the partial veto of individual letters. Wisconsin voters ratified that amendment in the April 1990 statewide general election.

This Comment examines the history of the Wisconsin partial veto as it developed in case law and administrative interpretation. The Comment argues that the sweeping partial veto power approved by the Wisconsin Supreme Court in 1988 conflicts with separation of powers principles and that this conflict is complicated by partisan and political concerns. The Comment approves of voter ratification of the 1990 partial veto amendment and recommends further action to define and restrict the partial veto authority.

On July 31, 1987, Wisconsin Governor Tommy G. Thompson approved the 1987-89 biennial state budget.[1] Before returning the budget bill to the state legislature, Governor Thompson vetoed 290 separate "parts" of the bill.[2] The number[3] and variety[4] of Governor Thompson's

1. Act of July 31, 1987, 1987 Wis. Act 27, 1987 Wis. Laws 69.

2. WIS. CONST. art. V, § 10 provides that "[a]ppropriation bills may be approved in whole or in part by the governor, and the part approved of shall become law, and the part objected to shall be returned in the same manner as provided for other bills."

3. In 1930, the Wisconsin Constitution was amended to allow the governor to veto appropriation legislation partially. *See infra* notes 29-30 and accompanying text. The list below shows the number of bills partially vetoed per legislative session from the inception of the partial veto power until the 1987-89 legislative session:

1931: biennial session (2)	1961: biennial session (3)	1979: biennial session (9)
1933: biennial session (1)	1963: biennial session (1)	1981: biennial session (10)
1935: biennial session (4)	1965: biennial session (4)	1981: special session (1)
1937: special session (1)	1967: biennial session (5)	1982: special session (1)
1939: biennial session (4)	1969: biennial session (11)	1983: biennial session (8)
1941: biennial session (1)	1971: biennial session (8)	1983: special session (3)
1943: biennial session (1)	1973: biennial session (14)	1985: biennial session (4)
1945: biennial session (2)	1973: special session (1)	1985: special session (2)
1947: biennial session (1)	1974: special session (3)	1986: special session (1)
1949: biennial session (2)	1975: biennial session (21)	1987: biennial session (18)
1953: biennial session (4)	1976: special session (1)	1987: special session (2)
1957: biennial session (3)	1977: biennial session (13)	
1959: biennial session (1)	1977: special session (2)	

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1987-89 budget bill partial vetoes were unprecedented in Wisconsin gubernatorial history.

Governor Thompson's partial vetoes dramatically altered legislative policy and appropriation decisions incorporated in the budget bill.[5] For example, one section of the budget bill would have created a statutory provision allowing courts to detain for "not more than 48 hours" any juvenile violating a delinquency proceeding court order.[6] Governor Thompson vetoed the term "48 hours" and creatively substituted "ten days" by vetoing individual letters and words from another sentence in that section.[7] The governor also vetoed single digits from appropriation amounts; the state Arts Board's appropriation was reduced from $750,000 to $75,000 by vetoing a "0."[8]

Partisan politics influenced the legislative reaction to Governor Thompson's budget vetoes. Governor Thompson, a Republican, faced off against the Democrat-controlled Wisconsin Legislature. In September 1987, Democratic legislators attempted to override some of the governor's budget vetoes; however, a united minority in the Wisconsin Senate stymied the override effort.[9]

Members of the Legislature's Joint Committee on Legislative Organization (JCLO)[10] earlier had filed an original action in the Wisconsin

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WISCONSIN LEGISLATIVE REFERENCE BUREAU, THE PARTIAL VETO—AN UPDATE, INFORMATIONAL BULLETIN 8 (1988) [hereinafter THE PARTIAL VETO IN WISCONSIN].

4. Subsequent litigation challenged six "creative" types of vetoes executed by Governor Thompson: vetoes of individual digits, vetoes of letters and parts of words, vetoes of isolated parts of different subunits, vetoes creating ungrammatical or incomprehensible text, vetoes changing "repeal and recreate" to "repeal," and vetoes impounding appropriations. Petitioners' Brief at 4-8, State *ex rel.* Wisconsin Senate v. Thompson, 144 Wis. 2d 429, 424 N.W.2d 385 (1988) (No. 87-1750-OA).

5. Since 1930, the Wisconsin state budget has been enacted in omnibus budget bills containing both appropriations and policy initiatives.

6. S.B. 100, 1987-1988 Wis. Legis., § 880y (1987).

7. Appendix of Petitioner's Brief, Petition for Leave to Commence an Original Action at 9-10, State *ex rel.* Wisconsin Senate v. Thompson, 144 Wis. 2d 429, 424 N.W.2d 385 (1988) (No. 87-1750-OA) [hereinafter Petition].

8. S.B. 100, 1987-1988 Wis. Legis., § 132 (1987).

9. WIS. CONST. art. V, § 10 provides that a gubernatorial veto can be overridden by the votes of two-thirds of the members of both houses of the Wisconsin Legislature. Thirty-three members compose the Wisconsin Senate; 99 members compose the Wisconsin Assembly. Thus, as few as 12 senators can prevent override of a gubernatorial veto.

In September 1987, the state Senate attempted to override 26 of the budget bill partial vetoes executed by Governor Thompson. All override attempts failed; the votes to override individual partial vetoes ranged from 19 in favor of override and 14 against, to 14 in favor of override and 19 against. BULLETIN OF THE PROCEEDINGS OF THE WISCONSIN LEGISLATURE, 1987-88 SESS., at 52 (Dec. 31, 1988).

10. JCLO is a permanent joint legislative committee consisting of 10 members: the president of the Senate; the speaker of the Assembly; and the majority, minority, assistant majority, and assistant minority leaders of both houses. WISCONSIN DEPT. OF ADMINISTRATION, WISCONSIN BLUE BOOK 399 (1989). JCLO designates the Legislature's representatives in any declaratory judgment action. WIS. STAT. § 13.90(2) (1987-1988).

Supreme Court, seeking judicial review of the governor's partial vetoes. The JCLO lawsuit alleged that Governor Thompson had improperly vetoed digits, letters and parts of words[11] and sought a declaratory judgment finding that the governor had unconstitutionally exercised his partial veto authority. In June 1988, the Wisconsin Supreme Court sustained Governor Thompson's partial vetoes in *State ex rel. Wisconsin Senate v. Thompson.*[12]

On June 30, 1988, Democratic leaders convened a one-day special session of the Wisconsin Legislature. The assembled legislators gave first consideration to a state constitutional amendment that would limit gubernatorial partial veto authority by prohibiting individual letter vetoes.[13] The amendment passed by wide margins in both the Senate and the Assembly.[14]

The partial veto amendment was reintroduced for second consideration by the new legislature that convened in January 1989.[15] The Senate quickly reapproved the amendment.[16] The Assembly held the amendment in its Rules Committee until the end of October, when it was placed on the Assembly calendar and approved by the full Assembly.[17] The amendment then appeared on the April 1990 statewide ballot[18] and was ratified by Wisconsin voters.[19]

11. Petition at 2, State *ex rel.* Wisconsin Senate v. Thompson, 144 Wis. 2d 429, 424 N.W.2d 385 (1988) (No. 87-1750-OA).

12. State *ex rel.* Wisconsin Senate v. Thompson, 144 Wis. 2d 429, 424 N.W.2d 385 (1988).

13. WIS. CONST. art. XII, § 1 provides:

> Any amendment . . . to this constitution may be proposed in either house of the legislature, and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment . . . shall be entered on their journals, . . . and referred to the legislature to be chosen at the next general election . . . and if, in the legislature so next chosen, such proposed amendment . . . shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the legislature to submit such proposed amendment . . . to the people in such manner and at such time as the legislature shall prescribe; and if the people shall approve and ratify such amendment . . . by a majority of the electors voting thereon, such amendment . . . shall become part of the constitution.

14. Enrolled Jt. Res. 76, 1987-1988 Wis. Legis., 1987 Wis. Laws 2180. The amendment would modify article V, section 10 of the Wisconsin Constitution by adding: "In approving an appropriation bill in part, the governor may not create a new word by rejecting individual letters in the words of the enrolled bill." The vote in the Senate was 18 in favor of the amendment and 14 opposed; the vote in the Assembly was 55 in favor of the amendment and 35 opposed.

15. The proposed amendment was reintroduced as 1989 Wisconsin Assembly Joint Resolution 7 and 1989 Wisconsin Senate Joint Resolution 11.

16. The Senate adopted the amendment on January 26, 1989 by a vote of 22 in favor and 11 opposed. BULLETIN OF THE PROCEEDINGS OF THE WISCONSIN LEGISLATURE, 1989-90 SESS., at 84 (Jan. 6, 1990).

17. Sixty-four Assembly members voted in favor of the proposed amendment, 32 members voted against the proposed amendment, and two members paired to cancel each other's vote. BULLETIN OF THE PROCEEDINGS OF THE WISCONSIN LEGISLATURE, 1989-90 SESS., at 75 (Nov. 4, 1989). The Assembly also approved a technical amendment to the

The recent partial veto amendment is the latest skirmish between the executive and legislative branches of Wisconsin state government over use of the partial veto and control of the state appropriations process. This Comment explores past; present and future partial veto disputes between Wisconsin governors and the Wisconsin legislature. In Part I, the Comment reviews past delineation and application of Wisconsin's partial veto authority.[20] The status of Wisconsin partial veto authority is deeply rooted in historic textual analysis and policy interpretation. Part II analyzes the present expansive partial veto power, as affirmed by *Wisconsin Senate*.[21] Part III examines the aftermath of *Wisconsin Senate* and discusses future partial veto alternatives. The Comment suggests that the partial veto authority permitted by *Wisconsin Senate* is too broad and applauds the April 1990 partial veto amendment. Ultimately, the Comment recommends further restriction of the Wisconsin partial veto authority.

I. THE PAST: HISTORY OF WISCONSIN'S PARTIAL VETO

In 1930, Wisconsin voters amended the state constitution to authorize gubernatorial partial veto of appropriation bills.[22] Since that time, interested parties have attempted to restrict, define, or eliminate the partial veto. On six occasions, the legality of particular partial vetoes has been challenged in the Wisconsin Supreme Court. The state attorney general's office has been asked for numerous legal opinions on partial veto questions. State constitutional amendments, designed to modify existing partial veto authority, have been introduced in the

proposed amendment, changing "1989" to "1990" where appropriate in the text of the proposed amendment. *Id.*; Assembly Am. 1 to S.J.R. 11, 1989-1990 Wis. Legis. (1989).

18. S.J.R. 11, 1989-1990 Wis. Legis. (1989). *See also* A.J.R. 7, 1989-1990 Wis. Legis. (1989).

19. The amendment was ratified with about 62% of the voters voting for the amendment. Wis. St. J., Apr. 4, 1990, at 3A, col. 1.

20. On six occasions, the Wisconsin Supreme Court has considered the extent of the partial veto power conferred on Wisconsin governors by WIS. CONST. art. V, § 10. *See* State *ex rel.* Wisconsin Telephone Co. v. Henry, 218 Wis. 302, 260 N.W. 486 (1935); State *ex rel.* Finnegan v. Dammann, 220 Wis. 143, 264 N.W. 622 (1936); State *ex rel.* Martin v. Zimmerman, 233 Wis. 442, 289 N.W. 662 (1940); State *ex rel.* Sundby v. Adamany, 71 Wis. 2d 118, 237 N.W.2d 910 (1976); State *ex rel.* Kleczka v. Conta, 82 Wis. 2d 679, 264 N.W.2d 539 (1978); State *ex rel.* Wisconsin Senate v. Thompson, 144 Wis. 2d 429, 424 N.W.2d 385 (1988). For a more detailed discussion of *Henry*, *Martin*, and *Sundby*, see Harrington, *The Propriety of the Negative—The Governor's Partial Veto Authority*, 60 MARQ. L. REV. 865 (1977).

21. *See supra* note 12.

22. Wisconsin voters ratified the partial veto amendment at the 1930 general election, following legislative passage of the proposed amendment as Enrolled Jt. Res. 37, 1927-1928 Wis. Legis., 1927 Wis. Laws 986, and Enrolled Jt. Res. 43, 1929-30 Wis. Legis., 1929 Wis. Laws 1079.

Wisconsin legislature. The history of these diverse yet interrelated efforts documents the evolution of Wisconsin's partial veto authority.

A. Constitutional Authorization

Before the 1930 partial veto amendment,[23] a Wisconsin governor possessed the same veto authority over any bill, regardless of content. That is, the governor could veto the entire bill. The governor's total veto power over appropriation bills lost much of its utility when the Wisconsin legislature began adopting omnibus appropriation bills[24] in the 1911 legislative session.[25] Earlier state budgets had been enacted as a series of agency appropriation bills, permitting a governor to veto individual appropriations by vetoing individual bills. By contrast, packaging multiple budget and policy items together in an omnibus appropriations bill forced a governor into an "all or nothing" appropriation veto situation. By 1913, Governor Francis E. McGovern had publicly decried decreased gubernatorial veto power resulting from omnibus state budgets.[26] Governor McGovern also lamented the consequent intragovernmental power balance.[27]

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23. *See supra* note 22.

24. An omnibus appropriation bill contains appropriation items and substantive legislation for multiple programs and initiatives.

25. THE PARTIAL VETO IN WISCONSIN, *supra* note 3, at 2.

26. On August 7, 1913, Governor McGovern delivered a special message concerning the appropriations process and the partial veto power. Addressing the Wisconsin Legislature, the Governor stated:

> [T]he significant result of the change (to omnibus appropriation bills) has been to practically nullify the executive veto with respect to all financial measures. As these bills have come to me during the closing days of this session there are many items in them that meet my approval; a number I should like to see reduced in amount; and others I should prefer to veto altogether if I had the power. But no chance to do this or to separate the good from the bad was given me. . . . The only alternative presented therefore was to sign these bills, defective in a number of particulars as I regarded them, or to veto them as a whole, thus rejecting what I had approved as well as what I had disapproved.

Id.

27. In Governor McGovern's opinion, it was clear

> that under the budget plan of appropriating money the executive department no longer exercises the influence or power it once had or was intended by the constitution to possess. It seems to me therefore something should be done to restore matters to the equilibrium of power and responsibility that has always existed between the executive and legislative branches of government in respect to these matters. With the introduction of the budget system and the framing of money bills as omnibus measures, authority should be conferred upon the governor that he does not now possess. . . . Otherwise, he cannot fairly be held responsible for appropriation measures. Under the method of legislation pursued at this session he now has in fact practically nothing to say about what shall go into appropriation bills or be kept out of them. But nothing more deeply concerns the people of the state than the appropriation of public money and the imposition of taxes; and to no state officer do they more quickly and properly turn for explanation when expenditures and taxes are high than to the governor.

Id.

A constitutional amendment, proposed in the 1925 legislative session, would have permitted a Wisconsin governor to "disapprove or reduce items or parts of items in any bill appropriating money."[28] Neither the Senate nor the Assembly passed the proposed amendment. A less permissive amendment, proposed in the 1927 legislative session, permitted a Wisconsin governor to veto "parts" of appropriation bills.[29] Both the 1927 Legislature and the 1929 Legislature passed the latter amendment, which was placed on the November 1930 general election ballot for voter ratification.[30]

However, controversy embroiled the Wisconsin partial veto authority even before the 1930 constitutional amendment received voter ratification. The 1929 Legislature enacted comprehensive budget reform legislation requiring that the governor submit a single budget bill.[31] Partial veto proponents argued that the budget reform conferred too much power on the legislature. Therefore, proponents claimed that the partial veto amendment was necessary to prevent the legislature from embarrassing the governor by increasing individual appropriation items in the budget bill. According to one proponent, the amendment restored the governor and the legislature to the balance intended by the constitution: "[t]he legislature holds the purse strings but cannot play politics and the governor is given a genuine veto power but . . . cannot dictate appropriations."[32]

Partial veto opponents, including gubernatorial candidate Phillip La Follette, feared that passage of the amendment would create a "dictatorship" of centralized executive power.[33] Wisconsin voters, however, rejected La Follette's fears and ratified the partial veto amendment by a wide margin in the November 30 general election.[34] Consequently, the partial veto provisions of article V, section 10, were added to the Wisconsin Constitution.[35]

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28. S.J.R. 23, 1925-1926 Wis. Legis. (1925).

29. S.J.R. 35, 1927-1928 Wis. Legis. (1927).

30. The partial veto amendment was approved by a statewide popular vote of 252,655 in favor of the amendment and 153,703 opposed. THE PARTIAL VETO IN WISCONSIN, *supra* note 3, at 3.

31. Act of May 17, 1929, Ch. 97, Laws of 1929, 1929 Wis. Laws 95. Increased efficiency and economy of state government motivated the budget reform legislation, which also created the state budget bureau.

32. Senator Thomas Duncan, quoted in THE PARTIAL VETO IN WISCONSIN, *supra* note 3, at 3.

33. THE PARTIAL VETO IN WISCONSIN, *supra* note 3, at 3. La Follette utilized the newly approved partial veto power after winning the 1930 gubernatorial election, however. *Id.* at 4.

34. *See supra* note 30.

35. *See supra* note 2.

B. Early Textual Interpretation

On six occasions, the Wisconsin Supreme Court has interpreted ambiguities in the constitutional partial veto authorization.[36] In 1935, the court first addressed partial veto issues with a unanimous decision in *State ex rel. Wisconsin Telephone Co. v. Henry*.[37] The Wisconsin Legislature had enacted an emergency relief bill to raise and distribute money to thousands of poverty-stricken, unemployed state residents.[38] To raise revenue for the relief efforts, the nine-section bill included six sections providing authority to impose emergency income taxes. Another section of the bill appropriated funds for relief efforts and specified how the funds were to be distributed. Two other sections stated legislative intent. Governor La Follette, when presented with the bill, vetoed the legislative intent sections and the distribution subsections of the appropriation section.

The Wisconsin Telephone Company (the Company), a taxpayer, brought an original action in the state supreme court to challenge the resulting law.[39] The Company alleged that the governor's partial veto authority did not permit approving an appropriation if a proviso or condition inseparably connected to the appropriation was vetoed. The Company also alleged that the governor could not veto parts of an appropriation bill that were not themselves appropriations.[40]

The court, in an opinion authored by Justice Fritz, upheld Governor La Follette's vetoes. The court did not reach the validity of vetoing inseparable provisos.[41] Instead, the court found that the vetoed

36. *See supra* note 20.

37. 218 Wis. 302, 260 N.W. 486 (1935).

38. Act of Mar. 27, 1935, Ch. 15, Laws of 1935, 1935 Wis. Laws 19.

39. The *Henry* defendants were Robert K. Henry, State Treasurer; Theodore Dammann, Secretary of State; and James E. Finnegan, Attorney General. The prayer for relief sought a declaratory judgment that the bill was not lawfully enacted; or, if the bill was lawfully enacted, it was not lawfully published; or, if the bill was lawfully enacted and published, it was unconstitutional. *Henry*, 218 Wis. at 303, 260 N.W. at 487.

40. *Id.* at 304, 260 N.W. at 488.

41. *Henry* might have been resolved differently if inseparable provisions had been vetoed. According to the court, if inseparable provisions had been at issue, "the decision in State ex rel. Teachers & Officers v. Holder, 76 Miss. 158, 23 So. 643, would afford support for the [Company's] contention." *Id.* at 309-10, 260 N.W. at 490. MISS. CONST. § 73 provided that "[t]he governor may veto parts of any appropriation bill, and approve parts of the same and the portions approved shall be law." *Holder* arose when the Mississippi governor vetoed sections of a bill passed by the Mississippi legislature to appropriate funds for the state Industrial Institute and College. The *Holder* court, invalidating the governor's veto, held:

> To allow a single bill, entire, inseparable, relating to one thing, containing several provisions, all complementary of each other, and constituting one whole, to be picked to pieces, and some of the pieces approved, and others vetoed, is to divide the indivisible; to make of one, several; to distort and pervert legislative action and by veto make a two-thirds vote necessary to preserve what a majority passed, allowable as to the entire bill, but inapplicable to a unit composed of divers complimentary parts, the whole passed because of each.

Holder, 76 Miss. at 182, 23 So. at 645.

distribution provisions were not inseparably connected to the approved appropriations measures.[42] In reaching that conclusion, the court announced several principles that have fundamentally shaped the evolution of Wisconsin partial veto authority.

First, the court defined the "parts" of appropriation bills subject to partial veto as "inseparable pieces" of those bills.[43] The court reasoned that the framers of the 1930 amendment had chosen the word "part" to define the extent of the partial veto power.[44] Choice of the word "part," the court concluded, constituted an implicit rejection of the "item" veto language commonly found in the partial veto provisions of other states.[45] Furthermore, the court opined, the word "part" was unambiguous. To illustrate its conclusion that "part" had a "usual, customary, and accepted meaning,"[46] the court provided a contemporary dictionary definition:

> One of the portions, equal or unequal, into which anything is divided, or regarded as divided, something less than a whole; a number, quantity, mass, or the like, regarded as going to make up, with others or another, a larger number, quantity, mass, etc., whether actually separate or not; a piece, fragment, fraction, member or constituent.[47]

Closely examining the language of the partial veto amendment, the court found no indication that the governor's power to veto was not intended to mirror the legislature's power to "join and enact sep-

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42. *Henry*, 218 Wis. at 309, 260 N.W. at 490.

43. *Id.* at 315, 260 N.W. at 492.

44. Some evidence disputes deliberate choice of the word "part" in framing the partial veto amendment. The drafting record for 1927 Wisconsin Senate Joint Resolution 35, which proposed the partial veto amendment, discloses that Senator William Titus had requested a joint resolution allowing the governor to veto "items" in appropriation bills. The drafting record does not indicate why the word "part" was incorporated in the joint resolution. WISCONSIN LEGISLATIVE REFERENCE BUREAU, CONSTITUTIONAL AMENDMENTS GIVEN "FIRST CONSIDERATION" APPROVAL BY THE 1987 WISCONSIN LEGISLATURE (1989).

According to Dr. H. Rupert Theobald, current Chief of the Legislative Reference Bureau serving the Wisconsin Legislature, no one knows why "part" was used instead of "item" in the 1930 partial veto amendment. Dr. Theobald notes that the unsuccessful partial veto amendment introduced in the 1925 Legislature had used the word "item," and that the same legislative drafter wrote both that unsuccessful amendment and the 1930 partial veto amendment. Interview with Dr. H. Rupert Theobald, Chief of the Legislative Reference Bureau, in Madison, Wisconsin (Apr. 6, 1989).

45. *Henry*, 218 Wis. at 310-13, 260 N.W. at 490-91. The court distinguished judicial interpretations of other state's partial veto provisions, because of differences in partial veto authorization language and differences in the nature of challenged vetoes. In fact, several other states constitutionally authorize their governors to veto parts of appropriation bills. *See, e.g.*, KY. CONST. § 88; MISS. CONST. art. 4, § 73; N.M. CONST. art. IV, § 22; N.D. CONST. art V, § 10; WYO. CONST. art. 4, § 9.

46. *Henry*, 218 Wis. at 313, 260 N.W. at 491.

47. *Id.* at 313, 260 N.W. at 491 (quoting WEBSTER'S NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE 1781 (2d ed. 1934)).

arable pieces of legislation."[48] Finding that the governor possessed a "quasi-legislative function," the court reasoned that good governmental principles should permit the governor to pass independently on each separable piece of legislation.[49] The vetoed relief distribution and legislative intent provisions of the emergency relief act did not themselves contain appropriations but did constitute separable pieces of legislation. Thus, the *Henry* court established a test that profoundly shaped the future of Wisconsin partial veto authority by ruling that the approved parts of the emergency relief law constituted a "complete, entire, and workable law."[50]

The *Henry* court engaged in a textual analysis centering on legislative history and common definitions of the word "part." The court's textual analysis established that the veto of a "part" of an appropriation bill, or a "partial veto," was not necessarily an "item" veto. Later partial veto challenges retain the textual analytic approach utilized in *Henry*. *Henry*, however, evaluated gubernatorial veto of large "parts": sections and subsections of a legislative bill. To the *Henry* court, a large "part" had an unambiguous meaning. Later litigation concerned the partial veto of ever smaller "parts" of legislative bills. The *Henry* opinion does not reflect the court's anticipation that its textual analysis eventually would be applied to individual digits and letters,[51] or that the meaning of a "part" itself would become completely ambiguous.

The *Henry* court established three key principles for later partial veto interpretation. First, the state constitution permitted the partial veto of "separable" pieces of legislation.[52] Second, a complete, entire and workable law must remain after partial vetoes are executed.[53] Finally, a Wisconsin governor performs "quasi-legislative" functions.[54] These three principles repeatedly reappear in subsequent partial veto analysis.

Henry was the first judicial attempt to limit the Wisconsin partial veto authority. The first legislative attempt to limit the partial veto authority occurred in the same year, when state legislators proposed limiting the governor's partial veto authority to "appropriation items."[55] The proposal, however, failed to pass either the Assembly or the Senate.

In 1936, exercise of the partial veto again provoked judicial review. *State ex rel. Finnegan v. Dammann*[56] raised the question of what con-

48. *Henry*, 218 Wis. at 315, 260 N.W. at 492.
49. *Id.*
50. *Id.* at 314, 260 N.W. at 491-92.
51. *See infra* notes 171-93 and accompanying text.
52. *See supra* note 48 and accompanying text.
53. *See supra* note 50 and accompanying text.
54. *See supra* note 49 and accompanying text.
55. A.J.R. 130, 1935-1936 Wis. Legis. (1935).
56. 220 Wis. 143, 264 N.W. 622 (1936). Attorney General Finnegan filed this original

stituted an "appropriation bill" subject to the governor's partial veto authority. In *Finnegan*, the court considered whether legislation regulating the payment of motor carrier fees[57] constituted an appropriation bill. The legislation specified that the motor carrier fees collected were to be paid into the state treasury and reappropriated through a revolving fund—governed by another section of the statutes.[58] Governor La Follette had vetoed two paragraphs of the bill, instigating the partial veto review.

Exploring the outer limits of the partial veto authority, the *Finnegan* court conceded that the revenue-raising motor carrier legislation contained no express appropriation. In an opinion by Justice Wickhem, the court noted that the partial veto authority applied to appropriation *bills*.[59] The court acknowledged that revolving fund appropriations impaired the governor's ability to reach objectionable appropriations.[60] The court, however, reasoned that expanding the definition of an "appropriation bill" to include a revenue raising bill would "extend the [partial veto authority] far beyond the evils it was designed to correct."[61] Because the motor carrier bill was a revenue-raising bill, the court held that Governor La Follette possessed no authority to veto the bill partially.[62]

In *Finnegan*, the court again applied a textual analysis to evaluate gubernatorial partial veto authority. The court's textual analysis of the meaning of "appropriation bill" restricted partial veto authority and indicated that the authority was intended to balance power between the governor and the legislature. *Finnegan* demonstrated that some limits could and would be applied to the partial veto authority.

In 1940, the governor's authority to change legislative policy through exercise of the partial veto authority was litigated in *State ex rel. Martin v. Zimmerman*.[63] *Martin* culminated a chain of events

action against Secretary of State Dammann, seeking a writ of mandamus ordering the Secretary to publish the approved parts of a bill vetoed in part by Governor La Follette. In Wisconsin, the attorney general and the secretary of state are elected officials. WIS. CONST. art VI, § 1.

57. Act of Oct. 4, 1935, Ch. 546, Laws of 1935, 1935 Wis. Laws 1076.

58. WIS. STAT. § 194.04(1)(bd),(cb) (1935).

59. *Finnegan*, 220 Wis. at 148, 264 N.W. at 624.

60. *Id.* at 148-49, 264 N.W. at 624.

61. *Id.* at 148, 264 N.W. at 624. *Cf.* 59 Op. Att'y Gen. of Wis. 94 (1970), in which Attorney General Warren advised that a bill could be distinguished from the *Finnegan* bill if it: (1) bore directly on appropriation of public monies by amending statutory sections containing sum sufficient appropriations; (2) showed on its face that salaries were to be raised; (3) expressly referred to the statutes containing the sum sufficient appropriation; and (4) specified payment by the state treasurer of some monies. Thus, the attorney general advised that the governor's partial veto of a bill amending statutory sections to raise judicial salaries was valid.

62. *Finnegan*, 220 Wis. at 149, 264 N.W. at 624.

63. 233 Wis. 442, 289 N.W. 662 (1940).

which began when the legislature enacted a bill changing the amount of state funds appropriated as aid for dependent children.[64] After the legislature had adjourned sine die,[65] Governor Julius Heil vetoed parts of the bill and forwarded the approved parts to Secretary of State Zimmerman for publication.

Secretary Zimmerman claimed that the proposed law was invalid for both procedural and substantive reasons. Procedurally, the Secretary reasoned that because the legislature had adjourned, the governor had not complied with a constitutional requirement that the vetoed bill be returned to the legislature.[66] The Secretary alleged that substantively the governor's vetoes unconstitutionally altered legislative policy. Citing these reasons, Secretary Zimmerman refused to publish the law so that it could go into effect.[67]

In an opinion by Justice Martin, the court upheld the validity of the law on related textual and policy grounds. The court found that the partial veto language of the constitution was unambiguous and had to be read as a whole.[68] Thus, the court held that only vetoed portions of an appropriation bill, rather than the entire bill, must be returned by the governor to the legislature for reconsideration.[69]

On this procedural point, the court reinforced its textual analysis with policy reasoning. According to the court, separation of powers principles prohibited the legislature from limiting the time the governor had to act on the bill. By adjourning, the legislature had forfeited its right to reconsider vetoed portions of the bill.[70] The 1930 partial veto amendment figured in the court's analysis, because:

> Its purpose was to prevent, if possible, the adoption of omnibus appropriation bills, logrolling, the practice of jumbling together in one act inconsistent subjects in order to force a passage by uniting minorities with different interests when the particular provisions could not pass on their separate merits, with riders of objectionable legislation attached to general ap-

64. Act of Nov. 18, 1939, Ch. 533, Laws of 1939, 1939 Wis. Laws 926.

65. The legislature adjourns "sine die" when it does not specify before adjourning a date on which members will reconvene.

66. WIS. CONST. art. V, § 10. Besides the partial veto authorization, this section also provides:

> If any bill shall not be returned by the governor within six days (Sundays excepted) after it shall have been presented to [the governor], the same shall be a law unless the legislature shall, by their adjournment, prevent its return, in which case it shall not be a law.

67. On the governor's behalf, Attorney General Martin sought a declaratory judgment affirming that the bill, as vetoed by the governor, had become a valid law. *Martin*, 233 Wis. at 443, 289 N.W. at 662.

68. *Martin*, 233 Wis. at 447, 289 N.W. at 664.

69. *Id.* at 449-50, 289 N.W. at 665.

70. *Id.* at 449, 289 N.W. at 665.

> propriation bills in order to force the governor to veto the entire bill and thus stop the wheels of government or approve the obnoxious act.[71]

Consequently, requiring the return of the approved portions of an appropriation bill, instead of just the vetoed portions, would have destroyed the entire purpose of the 1930 amendment.[72]

Substantively, Secretary Zimmerman also had alleged that Governor Heil's vetoes changed enacted legislative policy so dramatically that the remaining bill did not provide a complete, workable law. The court conceded that the governor's partial vetoes changed the policy enacted by the legislature.[73] The court, however, recalled that the partial vetoes upheld in *Henry*[74] also had produced policy changes by affecting the distribution of relief monies. Applying the same test utilized by the *Henry* court—whether the approved parts of a partially vetoed bill, taken as a whole, comprised a complete, workable law—the *Martin* court upheld Governor Heil's partial vetoes and gave effect to the remaining law.[75]

In *Martin*, the court continued the textual analysis of the partial veto authority initiated by the *Henry* court. Like *Henry*, *Martin* relies heavily on the language of the partial veto provisions of the Wisconsin Constitution. But the *Martin* court broadened its analysis to include policy themes which figure prominently in later partial veto disputes. The court reemphasized the *Henry* holding that partial vetoes validly could alter legislative policy as long as a complete, workable law remained. The *Martin* court, though, went beyond the *Henry* court and explicitly stated that the purpose of the 1930 partial veto amendment had been to control the logrolling engendered by omnibus appropriation bills. Thus, the *Martin* court began to diverge from interpreting the partial veto authority on the basis of the seemingly straightforward text of the 1930 amendment.

Thirty-five years passed before the partial veto controversy again wound its way into the Wisconsin Supreme Court.[76] In the interim, efforts to modify and clarify the scope of the partial veto authority periodically occupied the attention of the legislative and executive branches of Wisconsin state government.[77]

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71. *Id.* at 447-48, 289 N.W. at 664.
72. *Id.* at 448, 289 N.W. at 664.
73. *Id.* at 449, 289 N.W. at 665.
74. *See supra* note 38 and accompanying text.
75. *Finnegan*, 220 Wis. at 449-50, 264 N.W. at 624-25. *See supra* note 50 and accompanying text.
76. State *ex rel.* Sundby v. Adamany, 71 Wis. 2d 118, 237 N.W.2d 910 (1976). *See infra* notes 97-112 and accompanying text.
77. A constitutional amendment proposed in 1941 would have specified that governor could disapprove or reduce items or parts of items in any appropriation bill. 194 Assembly Joint Resolution 71. A 1961 proposal would have allowed a simple majority o

Over the years, Wisconsin attorneys general were asked for increasingly difficult partial veto opinions.[78] Recurring problems included the policy consequences of permitting the governor to use the partial veto to change legislative policy, and the thorny question of just what constituted a "part" which could be vetoed. *Henry*, *Finnegan*, and *Martin* provided the basis for attorney general opinions on these issues; however, the issues addressed eventually moved beyond the clear holdings of those cases.

In 1966, the director of the state Bureau of Management requested an opinion from the attorney general about policy consequences stemming from the governor's partial veto of an appropriation bill.[79] The bill specified salary ranges for state legislators. Based on the "complete, workable law" principle, developed in *Henry*[80] and affirmed in *Martin*,[81] the attorney general advised that a valid law survived the partial veto.[82]

The state Senate asked the attorney general for advice in 1970, when the governor vetoed indigent fee exemptions contained in an omnibus judicial appropriation bill.[83] The attorney general responded[84] with the *Martin* theory that the partial veto authority existed to prevent logrolling.[85] Consequently, the partial veto authority would be meaningless if the governor could not restructure a proposed law in a way that changed the intent of the legislature.[86] The attorney general also advised that because a complete, workable law remained after the governor's vetoes, the legislature would have to pass a subsequent bill in order to repeal the resulting law.[87]

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the members of both houses to override a partial veto. 1961 A.J.R. 130, 1961-1962 Wis. Legis. (1962). (A two-thirds vote in both houses is constitutionally required to override any gubernatorial veto. WIS. CONST. art. V, § 10.) Other legislative proposals to control the partial veto failed in 1969 and 1973. A.J.R. 9, 1969-1970 Wis. Legis. (1969); A.J.R. 56, 1969-1970 Wis. Legis. (1969); A.J.R. 123, 1973-1974 Wis. Legis. (1974). In 1975, two proposed amendments advocated eliminating the partial veto. 1975 S.J.R. 46, 1975-1976 Wis. Legis. (1975); 1975 A.J.R. 61, 1975-1976 Wis. Legis. (1975). A third 1975 proposal would have protected non-appropriation language by limiting partial vetoes to individual paragraphs or amounts. 1975 A.J.R. 74, 1975-1976 Wis. Legis. (1975). None of these proposed amendments seriously threatened the existing partial veto authority.

78. Attorney general opinions do not bind the Wisconsin Supreme Court. An opinion is entitled to the persuasive effect accorded it by the court on later examination. *Wisconsin Senate*, 144 Wis. 2d at 460, 424 N.W.2d at 397 (citing State *ex rel.* La Follette v. Stitt, 114 Wis. 2d 358, 375, 338 N.W.2d 684, 692 (1983)).

79. Act of June 29, 1966, Ch. 592, Laws of 1965, 1965 Wis. Laws 1053.

80. *See supra* note 50 and accompanying text.

81. *See supra* note 75 and accompanying text.

82. 55 Op. Att'y Gen. of Wis. 159 (1970).

83. 1969 Wis. Laws 253.

84. 59 Op. Att'y Gen. of Wis. 94 (1970).

85. *See supra* notes 71-72 and accompanying text.

86. 59 Op. Att'y Gen. of Wis. 99-100 (1970).

87. *Id.* at 101. The legislature had tried to protect its enacted legislative policy by rescinding approval of the non-vetoed portion of the judicial appropriation bill.

The propriety of using the partial veto to alter appropriations by striking individual digits surfaced in a 1973 attorney general opinion.[88] The chair of the Committee on Senate Organization sought the attorney general's opinion on this issue after the governor vetoed the "2" in a bill appropriating "$25,000,000" in bonding authority for state highway improvements.

The attorney general opined that the partial veto allowed a governor to accept or to reject, but not to alter, a separable part of an appropriation bill.[89] The attorney general reasoned that if a complete, workable law must remain after a partial veto was exercised, then a complete, workable part of legislation must also be vetoed.[90] Otherwise, a partial veto could not be returned to the legislature "in the same manner as provided for other bills."[91] Because the "2" vetoed from the bonding appropriation was not a complete, workable part, the attorney general concluded that the governor had invalidly exercised his partial veto authority.[92]

Similarly, the attorney general issued another opinion stating that a condition placed on an appropriation was not a separable part subject to partial veto.[93] The governor had vetoed one of two funding provisions attached to a snowmobile law enforcement bill,[94] and the Committee on Senate Organization inquired about the validity of the veto. Quoting *Henry*, the attorney general noted:

> [W]hat constitutes a 'part' of an appropriation bill, and is therefore subject to a partial veto under sec. 10, art. V, Wisconsin constitution, is not difficult to ascertain . . . if . . . the provisions in the disapproved parts of [the bill] were not provisos or conditions upon which the appropriation in the approved portions was made dependent or contingent.[95]

The attorney general reasoned that the vetoed funding provision constituted a proviso or condition on the snowmobile enforcement appropriation. Although the *Henry* court had not affirmatively stated that a proviso or condition could not be partially vetoed, the attorney general reached that conclusion and advised that the governor's attempted partial veto was invalid.[96]

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88. 62 Op. Att'y Gen. of Wis. 238 (1973).
89. *Id.* at 239.
90. *Id.*
91. *See supra* note 66.
92. 62 Op. Att'y Gen. of Wis. 240 (1973).
93. 63 Op. Att'y Gen. of Wis. 313 (1974).
94. Act of June 15, 1974, Ch. 298, Laws of 1973, 1973 Wis. Laws 850.
95. 63 Op. Att'y Gen. of Wis. 313 (1974) (quoting *Henry*, 218 Wis. at 313-14, 260 N.W. at 491).
96. 63 Op. Att'y Gen. of Wis. 317 (1974).

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C. Evolving Policy Considerations

In 1976, partial veto policy issues raised in earlier attorney general opinions finally came before the Wisconsin Supreme Court. *State ex rel. Sundby v. Adamany*[97] followed Governor Lucey's partial veto of non-appropriation language from an appropriation bill providing for local referenda before Wisconsin towns increased their tax levies.[98] The bill passed by the legislature made local referenda optional, but the governor's vetoes effectively made the local referenda mandatory.[99] A taxpayer brought *Sundby* as a declaratory judgment action, seeking invalidation of the governor's vetoes.

The central issue facing the *Sundby* court was the extent of item veto authority over non-appropriation provisions attached to appropriation legislation.[100] Governor Lucey's partial vetoes neither altered an appropriation nor eliminated a contingency on an appropriated amount.[101] Therefore, the *Sundby* court inquired whether a separable portion of the appropriation bill had been vetoed and whether a complete, workable law remained.[102] Without much discussion, the court opined that a complete, workable law remained, as required by *Henry* and *Martin*.[103] The court acknowledged that *Henry* and *Martin* had established that partial vetoes permissibly could alter legislative policy.[104] The court went on to provide an extensive policy justification for the governor's local referendum vetoes.

The *Sundby* court reasoned that the governor's quasi-legislative role justified using partial vetoes to alter legislative policy. The Wisconsin Constitution vested legislative power in the state Senate and in the state Assembly.[105] But the court cited both the state constitution[106]

97. 71 Wis. 2d 118, 237 N.W.2d 910 (1976).

98. Act of June 30, 1975, Ch. 39, Laws of 1975, 1975 Wis. Laws 51 (amended, repealed and repealed and recreated in part by Act of Oct. 1, 1975, Ch. 80, Laws of 1975, 1975 Wis. Laws 362.

99. *Sundby*, 71 Wis. 2d at 124, 237 N.W.2d at 912.

100. *Id.* at 131, 237 N.W.2d at 916.

101. *Id.*

102. *Id.* at 130-31, 237 N.W.2d at 916. The *Sundby* court based this inquiry on the partial veto validity criteria identified in *Henry* and *Martin*. *See supra* notes 37-54, 63-75 and accompanying text.

103. The court found no "need to consider these opinions or the propositions they stand for because there is no question in this case that the governor neither altered an appropriation nor removed a contingency or condition on the amount appropriated." *Sundby*, 71 Wis. 2d at 131, 237 N.W.2d at 916.

104. *Id.* at 130, 237 N.W.2d at 916.

105. *Id.* at 131, 237 N.W.2d at 916 (citing WIS. CONST. art. IV, § 1).

106. WIS. CONST. art. V, § 4 states:

> [The governor] shall have power to convene the legislature on extraordinary occasions, and in case of invasion, or danger from the prevalence of contagious disease at the seat of government, he may convene them at any other suitable place within the state. He shall communicate to the legislature, at every session, the condition

and the state biennial budget statute[107] as evidence of a recognized legislative role for the governor.[108] The court also quoted *Henry* for the proposition that the governor possessed a quasi-legislative role.[109]

The *Sundby* court also affirmed that the governor could use partial veto authority to make affirmative policy changes.[110] The court found that every veto has both a negative aspect and a positive aspect, and that the decision to veto always involved policy considerations.[111] Therefore, the court reasoned, the partial veto provisions of the state constitution fully anticipated that the governor's vetoes would alter enacted legislative policy.[112]

The *Sundby* decision broke no new ground concerning partial veto execution. Instead, the *Sundby* court reemphasized rules and policy developed in *Henry*[113] and *Martin*[114] regarding the scope of the partial veto. Nevertheless, the court did gratuitously expand the related concept of a recognized quasi-legislative role for the Wisconsin governor. Although firmly anchored in the texts of the state constitution, statutes

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of the state, and recommend such matters to them for their consideration as he may deem expedient. . . . He shall expedite all such measures as may be resolved upon by the legislature, and shall take care that the laws be faithfully executed.

107. WIS. STATS. § 16.46 (1987-1988) states:

The biennial state budget report shall be prepared by the secretary, under the direction of the governor, and a copy of a budget-in-brief thereof shall be furnished to each member of the legislature on the day of delivery of the budget message. The biennial state budget report shall . . . contain the following information:

(1) A summary of the actual and estimated receipts of the state government in all operating funds under existing laws during the current and the succeeding bienniums . . . ;

(2) A summary of the actual and estimated disbursements of the state government from all operating funds during the current biennium and of the requests of agencies and the recommendations of the governor for the succeeding biennium;

(3) A statement showing the condition of all operating funds of the treasury at the close of the preceding fiscal year and the estimated condition at the close of the current year;

(4) A statement showing how the total estimated disbursements during each year of the succeeding biennium compare with the estimated receipts, and the additional revenues, if any, needed to defray the estimated expenses of the state;

(5) A statement of the actual and estimated receipts and disbursements of each department and of all state aids and activities during the current biennium, the departmental estimates and requests, and the recommendations of the governor for the succeeding biennium. . . ;

(6) Any explanatory matter which in the judgement of the governor or the secretary will facilitate the understanding by the members of the legislature of the state financial condition and of the budget requests and recommendations.

108. *Sundby*, 71 Wis. 2d at 131-33, 237 N.W.2d at 916-18.

109. *Sundby*, 71 Wis. 2d at 133-34, 237 N.W.2d at 917-18 (citing *Henry*, 218 Wis. at 315, 260 N.W. at 492).

110. *Sundby*, 71 Wis. 2d at 134, 237 N.W.2d at 918.

111. *Id.*

112. *Id.*

113. *See supra* notes 37-54 and accompanying text.

114. *See supra* notes 63-75 and accompanying text.

and earlier cases,[115] this focus on the governor's institutional role assumed increased importance in later partial veto litigation. Indeed, *Sundby* marked a turning point in partial veto analysis, as the Wisconsin Supreme Court de-emphasized textual analysis and increasingly engaged in institutional analysis.[116]

The increasing tension between the legislative and executive branches over exercise of the partial veto power exploded in 1977. The legislature passed a bill permitting state citizens to contribute campaign finance funds to candidates for public office.[117] The legislative funding mechanism anticipated collecting contributions in conjunction with state income tax returns; contributions were added to tax payments due. After payment, contributions were turned over to the State Elections Board. Acting Governor Martin Schreiber, partially vetoing the campaign financing bill, changed the funding mechanism from a contribution to a "check-off." In effect, the acting governor's vetoes permitted taxpayers actually to designate a portion of their tax payments for campaign financing.

The chair of the Senate Organization Committee asked the attorney general to issue an opinion concerning the legality of the campaign financing partial veto.[118] The attorney general responded that the partial vetoes were invalid.[119] Consequently, the attorney general opined that the entire campaign financing law should be considered vetoed.[120]

The attorney general was not troubled by the policy changes achieved by the acting governor's campaign financing vetoes; *Sundby* had already indicated that affirmative legislation was a proper partial veto result.[121] The attorney general reasoned, however, that *Sundby* had affirmed earlier attorney general opinions finding that a governor could not veto conditions placed upon appropriations.[122] Because the attorney general determined that the contribution funding mechanism was a condition placed on any eventual campaign financing appropriation, the attorney general advised that the acting governor's partial vetoes were invalid.[123]

The campaign financing partial veto controversy spilled over into the Wisconsin Supreme Court. In *State ex rel. Kleczka v. Conta*,[124] the

115. *See supra* notes 105-09 and accompanying text.
116. *See infra* notes 170-219 and accompanying text.
117. Act of Oct. 20, 1977, Ch. 107, Laws of 1977, 1977 Wis. Laws 588.
118. 66 Op. Att'y Gen. of Wis. 310 (1977).
119. The attorney general determined that the campaign financing law constituted an appropriations bill because the funds collected would be used for a public purpose: campaign financing. *Id.* at 311.
120. *Id.* at 315.
121. *Id.* at 311.
122. *Id.* at 312-14. *See supra* notes 93-96.
123. 66 Op. Att'y Gen. of Wis. 314 (1977).
124. 82 Wis. 2d 679, 264 N.W.2d 539 (1978).

court disagreed with the attorney general's campaign financing opinion.[125] Instead, the *Kleczka* court held that the Wisconsin Constitution authorized partial veto of conditions or provisos attached to legislative appropriations.[126]

Writing for the majority, Justice Heffernan easily determined that the campaign financing bill constituted an appropriation bill[127] and that Acting Governor Schreiber had properly returned vetoed portions of the bill to the legislature.[128] The court also confirmed the *Henry*, *Martin* and *Sundby* holdings that policy alteration did not invalidate the gubernatorial partial vetoes.[129]

After disposing of these preliminary issues, the *Kleczka* court squarely confronted whether conditions attached to appropriations could be partially vetoed. The court identified severability as the test of partial veto validity and reasoned that severability must be determined as a matter of substance rather than as a matter of form.[130] But the court required that severability be tested against standards promulgated by earlier Wisconsin courts, not against standards announced by courts operating under other constitutions.[131] In Wisconsin, *Henry*[132] and *Martin*[133] indicated that the appropriate test of severability was whether a complete, workable law remained after the governor's partial veto exercise.[134] After sketching the perimeter of the Wisconsin severability test, the court turned to partial veto of provisos or conditions.

The *Kleczka* court reasoned that *Sundby* authorized the governor to alter legislative policy through partial veto execution.[135] Expanding on this premise, the court noted that the governor's ability to change policy was "coextensive with the ability of the Legislature to enact the policy initially."[136]

Regarding Acting Governor Schreiber's partial vetoes, the court acknowledged that the voluntary nature of the contribution mechanism could be interpreted as a proviso or condition inseparable from any campaign financing appropriation.[137] The court further acknowledged

125. *See supra* notes 117-23 and accompanying text.
126. *Kleczka*, 82 Wis. 2d at 715, 264 N.W.2d at 555.
127. *Id.* at 688, 264 N.W.2d at 542.
128. *Id.* at 693-94, 264 N.W.2d at 545.
129. *Id.* at 708-09, 264 N.W.2d at 552. *See supra* notes 37-54, 63-75, 97-112 and accompanying text.
130. *Kleczka*, 82 Wis. 2d at 705, 264 N.W.2d at 550.
131. *Id.*
132. *See supra* note 50 and accompanying text.
133. *See supra* note 75 and accompanying text.
134. *Kleczka*, 82 Wis. 2d at 705-08, 264 N.W.2d at 550-53.
135. *Sundby*, 71 Wis. 2d at 134, 237 N.W.2d at 918.
136. *Kleczka*, 82 Wis. 2d at 709, 264 N.W.2d at 552.
137. *Id.* at 712, 264 N.W.2d at 553.

that "the dicta of Wisconsin cases" lent support to the idea that the contribution mechanism was an inseparable proviso that could not be altered.[138]

The *Kleczka* court, however, opined that the earlier Wisconsin dicta represented inconsidered statements made to appease disappointed litigants.[139] *Henry* marked the first appearance of the dicta in Wisconsin partial veto case law; the principles discussed in the *Henry* dicta derived from a Mississippi partial veto challenge.[140] The Mississippi Constitution, unlike the Wisconsin Constitution, specifically permitted the state legislature to set conditions on appropriations.[141] Therefore, the *Henry* dicta did not correctly state Wisconsin law and had no precedential value.[142]

Instead, the court determined that no similar provision in the Wisconsin Constitution limited partial veto authority. The *Kleczka* court concluded that "[u]nder 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 . . . is a complete, entire, and workable bill which the legislature itself could have passed in the first instance."[143] The campaign financing bill was an appropriation bill. A "complete, entire, and workable bill" remained after exercise of the governor's partial veto.[144] Thus, the court found that a valid law had been enacted and published.[145]

The *Kleczka* decision produced the first dissenting opinion in the history of Wisconsin partial veto litigation.[146] Justice Connor T. Hansen agreed that Justice Heffernan correctly rejected the elusive partial veto tests adopted by Mississippi and other jurisdictions.[147] Justice Hansen, however, believed that the *Kleczka* majority had gone too far in holding that inseparable conditions attached to legislative appropriations could be partially vetoed.[148]

Justice Hansen's analysis focused on separation of powers issues, especially the legislative role attributed to the governor by the majority. According to Justice Hansen, the Wisconsin Constitution provided for three branches of government; no branch was allowed to perform the functions of the other branches.[149] Consequently, he viewed as very

138. *Id.*
139. *Id.* at 713, 264 N.W.2d at 554.
140. State *ex rel.* Teachers and Officers v. Holder, 76 Miss. 158, 23 So. 643 (1898). *See supra* note 38 and accompanying text.
141. *Kleczka*, 82 Wis. 2d at 712 n.4, 264 N.W.2d 553 n.4.
142. *Id.* at 713, 264 N.W.2d at 554.
143. *Id.* at 715, 264 N.W.2d at 555.
144. *Id.*
145. *Id.* at 715-16, 264 N.W.2d at 555.
146. *Id.* at 716, 264 N.W.2d at 555 (Hansen, J., concurring in part and dissenting in part).
147. *Id.*
148. *Id.*
149. *Id.* at 718-19, 264 N.W.2d at 556-57.

limited any legislative role assigned to the governor. The governor's legislative role, Justice Hansen reasoned, should not be distorted on grounds of administrative convenience, such as state budget preparation.[150] Accordingly, Justice Hansen maintained that the previously recognized partial veto limitations should be retained,[151] even if the previous limitations originated in dicta. Justice Hansen found no justification for changing the limitations, either in the history of the 1930 partial veto amendment or in the constitutional provisions added by the amendment. Requiring only that a partially vetoed bill constitute a complete, workable law, Justice Hansen reasoned, imposed too little restraint on gubernatorial usurpation of legislative power.[152]

Further, Justice Hansen warned that the majority's decision left no barrier preventing a governor from striking part of an appropriation figure.[153] He also expressed concern because the majority no longer provided grounds for objection to partial vetoes that increased appropriations.[154] Worst of all, in Justice Hansen's analysis, the new test posed no obstacle to producing a complete and workable law unrelated to the subject of a bill passed by the legislature.[155]

Recalling that the *Henry* court had interpreted the partial veto as applicable only to legislative components that could be enacted separately, Justice Hansen opined that the power to veto legislative components did not include the power to reduce a bill to single phrases, words, letters and punctuation marks. Justice Hansen recalled that use of the partial veto had become ever more frequent and had been applied to ever smaller portions of legislative bills. He observed:

> Only the limits of one's imagination fix the outer limits of the exercise of the partial veto power by incision or deletion by a creative person. At some point this creative negative constitutes the enacting of legislation by one person, and at precisely that point the governor invades the exclusive power of the legislature to make laws.[156]

In conclusion, Justice Hansen suggested limiting the partial veto to grammatically and structurally distinct portions of legislation.[157] Unlike the ambiguous standard resulting from the majority's historical analysis, Justice Hansen reasoned that his proposed test could be pre-

150. *Id.*
151. *Id.* at 722, 264 N.W.2d at 558.
152. *Id.* at 722-27, 264 N.W.2d at 558-61.
153. The issue of striking digits from appropriation figures was left open by the *Sundby* court. *Id.* at 723, 264 N.W.2d at 558-59.
154. *Id.*
155. *Id.* at 723, 264 N.W.2d at 559.
156. *Id.* at 720, 264 N.W.2d at 557.
157. *Id.* at 726, 264 N.W.2d at 560.

dictably applied, would not require constant judicial mediation of policy disputes between the other branches of state government, and would protect the prerogatives reserved to the legislature by the constitution.[158]

The *Kleczka* majority continued the trend, initiated by the *Sundby* court, away from textual analysis of partial veto authority and toward institutional analysis of the roles of the governor and the legislature. As Justice Hansen pointed out in his dissent, increasingly complicated partial veto questions required increasingly sophisticated analyses that increasingly departed from the text of the Wisconsin Constitution. The majority demonstrated a tendency to adhere to the text of earlier opinions and to reason from the language of those opinions to justify policy results deemed desirable by the majority of the court. But once policy considerations began to dominate partial veto analysis, it became ever harder to determine where lines could be drawn between proper and improper exercise of the partial authority. Consequently, the policy based analysis that the court still claimed to derive from the text of the constitution became more and more strained.

Following *Kleczka*, sustained legislative efforts to halt further expansion of the partial veto power occurred in the late 1970s and early 1980s.[159] Only one amendment[160] proposed between 1930 and 1988 passed both houses of the legislature on first consideration. Although defeated on reconsideration in the next legislative session, the amendment would have adopted the test proposed by Justice Hansen's *Kleczka* dissent: partial vetoes only for legislative parts that could have been enacted as complete, workable laws.[161]

158. Several attorney general opinions followed the *Kleczka* case. In 70 Op. Att'y Gen. of Wis. 154 (1981), the speaker of the state Assembly was advised that the governor could not attempt to remove partial vetoes against an appropriation bill once the governor had returned a veto message to the legislature. In 70 Op. Att'y Gen of Wis. 189 (1981), the attorney general addressed procedural problems resulting from a bungled attempt to execute partial vetoes. When the governor tried to fix his partial veto errors and reconcile what he had done with what he had meant to do, the attorney general was called on to provide an opinion about the physical manifestation of partial vetoes in an appropriation bill.

Two other attorney general opinions raised the partial veto stakes somewhat by analogizing the partial veto powers of county executives to the partial veto powers of the governor. Like the governor, a county executive may veto non-appropriation parts of an ordinance or county board resolution containing an appropriation. 73 Op. Att'y Gen. of Wis. 92 (1984). Like the legislature, a county board may not amend a resolution or an ordinance after the county executive has vetoed the document and returned it to the board. 74 Op. Att'y Gen. of Wis. 73 (1985).

159. 1977 Senate Joint Resolution 46 would have prohibited partial veto of less than an entire dollar amount or a numbered section of law included in an appropriation bill. 1979 Senate Joint Resolution 16 would have limited partial vetoes to complete sections of appropriation bills.

160. 1979 S.J.R. 7, 1979-1980 Wis. Legis. (1979). This amendment also would have allowed deletion only of complete dollar amounts.

161. A similar amendment, limiting partial vetoes to complete dollar amounts or

II. The Present: Letters and Digits

The Wisconsin partial veto authority eventually extended to lette and digits, as Justice Hansen had predicted in his *Kleczka* dissent.[1 In June 1987, the Wisconsin legislature passed the omnibus 1987-19 biennial budget bill.[163] Governor Tommy G. Thompson executed 2 partial vetoes before signing the budget bill. The unprecedente number[164] of Governor Thompson's partial vetoes sparked controver in the legislature[165] and among state government observers. Governc Thompson's partial vetoes also inspired controversy because some the vetoes were quite "creative." Some vetoes deleted single digits fro appropriations and other numbers; other vetoes impounded selecte appropriations. Governor Thompson vetoed individual letters an parts of words, sometimes creating ungrammatical or incomprehensibl text. The governor also vetoed isolated subunits of the budget bill and in some cases, partially vetoed instructions to "repeal and recreate" statutes to simply "repeal" those statutes.[166]

JCLO,[167] on behalf of the legislature, filed a declaratory actio challenging the governor's "creative" exercise of his constitutional par tial veto authority.[168] Seeking a dispositive ruling on the scope of the partial veto authority, the action challenged thirty-seven vetoes representative of the 290 partial vetoes executed by Governor Thompson.[169]

The Wisconsin Supreme Court voted four-to-three to uphold Governor Thompson's partial vetoes in *State ex rel. Wisconsin Senate v. Thompson*.[170] Chief Justice Heffernan, writing for the majority, held that

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numbered sections of an appropriation bill, failed in the 1983 legislative session. S.J.R. 16, 1983-1984 Wis. Legis. (1983).

162. *See supra* notes 153-56 and accompanying text.

163. Act of July 31, 1987, 1987 Wis. Act 27, 1987 Wis. Laws 69.

164. *See supra* note 3 and accompanying text.

165. Democratic leaders convened a special legislative session on September 29, 1987, and attempted to override some of the governor's budget bill vetoes. All override attempts, however, failed. *See* 1 BULLETIN OF PROCEEDINGS OF THE WISCONSIN LEGISLATURE, 1987-88 SESS. 53 (1989).

166. Petitioners' Brief at 4-7, State *ex rel.* Wisconsin Senate v. Thompson, 144 Wis. 2d 429, 424 N.W.2d 385 (1988) (No. 87-1750-OA).

167. *See supra* note 10 and accompanying text.

168. Parties joining JCLO as plaintiffs included the Wisconsin Senate; Fred Risser, President of the Wisconsin Senate; the Wisconsin Assembly; and Thomas Loftus, Speaker of the Wisconsin Assembly.

169. The petitioners contended that WIS. CONST. art. V, § 10 conferred no gubernatorial authority to veto letters, digits or words, or to reduce appropriation amounts. The governor maintained that the constitution and *Kleczka* permitted veto of any part of an appropriation bill—including letters, digits and words—as long as a complete, workable law remained. *Wisconsin Senate*, 144 Wis. 2d at 434, 424 N.W.2d at 386.

170. 144 Wis. 2d 429, 424 N.W.2d 385 (1988).

> the governor may, in the exercise of his partial veto authority over appropriation bills, veto individual words, letters and digits, and also may reduce appropriations by striking digits, as long as what remains after veto is a complete, entire, and workable law.[171]

For the first time, the majority also explicitly acknowledged "the long-standing practical and administrative interpretation or *modus vivendi* between governors and legislatures, that the consequences of any partial veto must be a law that is germane to the topic or subject matter of the vetoed provisions."[172]

The majority observed that *Henry* had indelibly set the broad scope of Wisconsin's partial veto power by distinguishing the ability of Wisconsin governors to veto appropriation bill "parts" from the ability of other state governors to veto "items."[173] Recalling the textual constitutional analysis performed by the *Henry* court,[174] the *Wisconsin Senate* majority reasoned that proponents of the 1930 partial veto amendment would have written "item" if they had intended that only "items" could be vetoed. Hence, the majority said, early partial veto interpretation established that the partial veto could be used to strike "parts" that were not separable as "items."[175] The *Henry* test, the majority stated, required: (1) that the bill partially vetoed be an appropriation bill, (2) that the part vetoed need not be an appropriation, and (3) that the approved portion contain a complete and workable law.[176]

The majority reasoned that *Finnegan*[177] had again broadly interpreted the scope of the partial veto authority.[178] However, the majority did not identify any basis for this observation. The majority approved the *Martin* court's emphasis on the viability of the law remaining after partial veto of an appropriation bill.[179] The majority acknowledged that the *Martin* court had stated that prevention of logrolling[180] was the reason for providing state governors with partial veto authority.[181]

171. *Id.* at 437, 424 N.W.2d at 388.
172. *Id.* (emphasis in original).
173. *Id.* at 439, 424 N.W.2d at 388.
174. *See supra* notes 37-50 and accompanying text.
175. *Wisconsin Senate*, 144 Wis. 2d at 440-41, 424 N.W.2d at 388.
176. *Id.* at 441, 424 N.W.2d at 388-89.
177. *See supra* notes 55-62 and accompanying text.
178. *Wisconsin Senate*, 144 Wis. 2d at 441-42, 424 N.W.2d at 389-90.
179. *Id.* at 442, 424 N.W.2d at 390 (citing *Martin*, 233 Wis. at 450, 289 N.W. at 665).
180. "Logrolling" according to the *Martin* court, consisted 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." *Martin*, 233 Wis. at 447-48, 289 N.W. at 264.
181. *Wisconsin Senate*, 144 Wis. 2d at 443, 424 N.W.2d at 390 (citing *Martin*, 233 Wis. at 447-48, 289 N.W. at 664).

The majority, though, discounted the importance of anti-logrolling policy because no Wisconsin statute or constitutional provision forbade the adoption of omnibus budget bills.[182]

Furthermore, the majority found the partial veto authority conferred by the 1930 constitutional amendment "particularly ill-suited and cumbersome" as a means of preventing logrolling.[183] A limited definition of "logrolling," concentrating on specific vote-trading occurrences rather than broader underlying concepts, figured significantly in the majority's analysis.[184] Consequently, the majority concluded that the partial veto amendment had been adopted to facilitate governors' exercise of their quasi-legislative power, not to prevent logrolling.[185] Reviewing later Wisconsin partial veto cases, the majority also found that *Sundby* and *Kleczka* had acknowledged a broadly sweeping partial veto authority.[186]

Summarizing the five Wisconsin partial veto cases, the majority extracted three central principles. First, Wisconsin partial veto authority was uniquely broad and expansive, to permit Wisconsin governors to deal flexibly with omnibus appropriation bills. Second, partial veto authority could be exercised against provisos and conditions attached to appropriations. Third, partial veto authority could be used to effect positive or negative changes in policy or in appropriations.[187] The majority noted that the quintet of cases developing these principles—*Henry*,[188] *Finnegan*,[189] *Martin*,[190] *Sundby*[191] and *Kleczka*[192]—had been nearly unanimous, producing just one dissenting opinion.[193]

Although the *Wisconsin Senate* majority accurately derived and stated these principles, it also distorted the principles. The majority claimed to evaluate both the language and policy of Governor Thompson's partial vetoes, thus continuing analytic patterns originated and followed in the earlier cases. By discounting the significance of anti-logrolling policy, however, the majority divorced earlier textual interpretations from the policy that underlay those interpretations. The *Wisconsin Senate* majority claimed to derive its analysis from the text of earlier opinions and the constitution itself; but, in fact, the majority

182. *Wisconsin Senate*, 144 Wis. 2d at 445, 424 N.W.2d at 390.
183. *Id.* at 446, 424 N.W.2d at 391.
184. *Id.* at 442-47, 424 N.W.2d at 390-92.
185. *Id.*
186. *Id.* at 447-50, 424 N.W.2d at 392-93.
187. *Id.* at 450-51, 424 N.W.2d at 393.
188. *See supra* notes 37-50 and accompanying text.
189. *See supra* notes 56-62 and accompanying text.
190. *See supra* notes 63-75 and accompanying text.
191. *See supra* notes 97-112 and accompanying text.
192. *See supra* notes 124-58 and accompanying text.
193. *Wisconsin Senate*, 144 Wis. 2d at 450, 424 N.W.2d at 393.

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utilized precedential language while rejecting the clearly stated policy relied on by earlier courts.

Instead, the *Wisconsin Senate* majority focused on the quasi-legislative role first attributed to Wisconsin governors in *Henry*.[194] Ironically, the *Wisconsin Senate* majority derived this analysis from language in which the *Henry* court identified a gubernatorial quasi-legislative role with logrolling prevention.[195]

By analyzing this language out of context, the *Wisconsin Senate* majority performed a textual analysis that seemingly ignored the policy underpinnings relied on by earlier courts and instead substituted policy of the majority's preference.

The majority did identify some limitations on the governor's quasi-legislative power.[196] The majority noted that none of the 988 partial vetoes executed between 1931 and October 1987 had created a totally new, unrelated or nongermane law.[197] The majority inferred that all governors had recognized an inherent topicality or germaneness limitation on the partial veto authority.[198] The majority reasoned that a germaneness limitation on the exercise of partial vetoes provided a practical explanation of historical relations between Wisconsin governors and legislatures. Therefore, the majority held, a germaneness limitation on partial vetoes had achieved the force of law.[199]

The germaneness limitation recognized by the *Wisconsin Senate* majority imposes an amorphous limit on gubernatorial partial veto authority. The majority did not clearly define the dimensions of "germaneness." The definitions of other ambiguous words related to the partial veto authority have been litigated.[200] Thus, future litigation

194. *Henry*, 218 Wis. at 315, 260 N.W. at 492.

195. According to the *Henry* court,

> there are reasons why the governor should have a coextensive power of partial veto, to enable him to pass, in the exercise of his quasi-legislative function, on each separable piece of legislation or law on its own merits. . . . in order to check or prevent the evil consequences of improper joinder, so far, at least, as appropriation bills are concerned, it may well have been deemed necessary, in the interest of good government, to confer upon the Governor . . . the right to pass independently on every separable piece of legislation in an appropriation bill.

Id. at 315, 260 N.W. at 492. Justice Bablitch raised this point in his *Wisconsin Senate* dissent. *Wisconsin Senate*, 144 Wis. 2d at 470, 424 N.W.2d at 400-01 (Bablitch, J., dissenting in part, concurring in part).

196. The existence of an inherent germaneness limitation on the partial veto power was raised in oral arguments preceding the *Wisconsin Senate* decision. *Wisconsin Senate*, 144 Wis. 2d at 451, 424 N.W.2d at 393.

197. *Id.* at 451, 424 N.W.2d at 393-94.

198. *Id.* at 452, 424 N.W.2d at 394.

199. *Id.*

200. For example, *Henry* attempted to clarify what constituted a "part." *See supra* notes 43-47 and accompanying text. Similarly, *Finnegan* addressed the definition of an "appropriation bill." *See supra* notes 59-61 and accompanying text.

attempting to define the limits of the germaneness requirement can be anticipated.

The *Wisconsin Senate* majority recognized that the complete, workable law requirement[201] also limited gubernatorial partial veto authority. This requirement, the majority reasoned, provided an objective test permitting a governor to determine in advance the validity of a particular partial veto.[202] But like the germaneness requirement, the complete, workable law requirement does not significantly restrict the governor's quasi-legislative power.[203]

Although primarily emphasizing the gubernatorial quasi-legislative power, the majority implicitly recognized that separation of powers issues could not be totally eliminated from partial veto analysis. The majority reasoned that gubernatorial quasi-legislative power did not threaten constitutional separation of powers requirements because an alternative process allowed the legislature to protect initiatives from the partial veto. Specifically, the legislature could submit substantive legislation as a separate bill, instead of as part of an omnibus appropriations package.[204] The majority declined to discuss whether submitting numerous substantive and appropriation bills, as a protective maneuver, should be preferred public policy.[205]

Ultimately, the majority held that the broad quasi-legislative power approved in prior decisions dictated that Governor Thompson's vetoes of letters and words were valid and constitutional.[206] Analogously, the majority decided that individual digits could be vetoed to reduce individual appropriations. Although the state constitution did not specifically authorize reduction of appropriation items, neither did the state constitution specifically prohibit reduction of appropriation items. Therefore, the majority found that the constitution conveyed implicit authority to use partial vetoes to reduce appropriations.[207]

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201. *Wisconsin Senate*, 144 Wis. 2d at 453, 424 N.W.2d at 394.

202. *Id.*

203. The majority specifically declined to address the petitioners' allegation that some of the challenged partial vetoes were inartful, clumsy, ungrammatical or incomprehensible. In dicta, the majority stated that the test applied to partial vetoes is not a grammar test. *Id.* at 462-63, 424 N.W.2d at 398.

204. *Id.* at 463-64, 424 N.W.2d at 398-99.

205. *Id.* at 455, 424 N.W.2d at 395. In an aside to the legislature, the majority explicitly acknowledged that good practical, political and administrative reasons supported inserting non-appropriation initiatives into appropriation bills. The majority, however, claimed that a broad partial veto authority was needed to combat the "terrible abuse" invited by such "jumbling together." If the legislature was unhappy with the sweep of the partial veto power, the majority suggested keeping policy initiatives out of the budget bill. Alternatively, the majority suggested that the legislature consider amending the partial veto provisions of the constitution. *Id.* at 464-65, 424 N.W.2d at 399.

206. *Id.* at 465, 424 N.W.2d at 399.

207. *Id.* at 458, 424 N.W.2d at 396.

A strong dissenting opinion disagreed with the portion of the majority opinion allowing the partial veto of individual letters.[208] Justice Bablitch, joined by Justice Abrahamson and Justice Steinmetz, disagreed with the majority on separation of powers grounds, precedential grounds, and practical grounds. Justice Bablitch wrote that the state constitution gave the governor the power to approve and to veto, but not the power to create.[209] He reasoned that allowing the governor to veto letters allowed the governor to create legislation. New, gubernatorially created legislation could be upheld with the approval of as few as twelve members of the legislature.[210] Therefore, Justice Bablitch wrote that permitting the governor to create legislation through partial veto exercise strained the state constitution beyond the breaking point.[211] Furthermore, Justice Bablitch feared that such legislation invited terrible abuse which the constitutional framers could not have intended.[212]

Justice Bablitch also reasoned that Wisconsin partial veto precedent did not dictate the majority's holding; rather, the partial veto amendment history dictated an opposite result.[213] He charged that the majority had abandoned the purpose of the amendment—prevention of logrolling—consistently relied on in earlier litigation.[214]

On the separation of powers issue, Justice Bablitch reasoned that allowing a governor to enact new, germane legislation conferred gubernatorial legislative power surpassing that of the legislature. Ordinarily, enactment of legislation required passage by both houses of the legislature and signature by the governor.[215] The partial veto authority, however, allowed the governor to legislate independently, checked only by the threat of a potential veto override.

Furthermore, Justice Bablitch reasoned that the majority ignored a partial veto check imposed by *Kleczka*. The *Kleczka* court had held that the governor's power to disassemble legislation was coextensive with the legislature's power to assemble legislation.[216]

Ultimately, Justice Bablitch argued that the court should recognize the plain meaning of the constitutional partial veto provision and longstanding constitutional principles. They reasoned that their interpre-

208. *Wisconsin Senate*, 144 Wis. 2d 466, 424 N.W.2d at 399-400 (Bablitch, J., dissenting in part, concurring in part).

209. *Id.* at 466, 424 N.W.2d at 399-400.

210. This would occur if 12 of the 33 state senators voted against a veto override attempt. Article V, section 10 of the Wisconsin Constitution requires the votes of two-thirds of the members of both legislative houses to override a gubernatorial veto.

211. *Wisconsin Senate*, 144 Wis. 2d at 466, 424 N.W.2d at 400.

212. *Id.* at 470, 424 N.W.2d at 401.

213. *Id.* at 468, 424 N.W.2d at 400.

214. *Id.* at 469-70, 424 N.W.2d at 401.

215. *Id.* at 471-73, 424 N.W.2d at 401-02.

216. *Id.* at 472-73, 424 N.W.2d at 402. *See supra* note 136 and accompanying text.

tation would avoid depleting limited government resources by eliminating continual wrangling over the validity of partial vetoes.[217]

Therefore, Justice Bablitch and the other dissenters advocated adopting the *Kleczka* approach and permitting the partial veto of entire words. Although new policy might be created by vetoing words, policy alteration would not be an inevitable or intentional result of such vetoes.[218] They also advocated allowing partial veto of digits, interpreting these vetoes as subsumed under the constitutional authority to veto in part. The dissenters reasoned that digit partial vetoes, unlike letter partial vetoes, could not create new law.[219]

The *Wisconsin Senate* dissenting opinion followed established partial veto textual analysis and policy analysis more closely than did the majority opinion. Like the majority, the dissenters acknowledged that the partial veto power applied to digits and words. But the dissenters reached this position without the majority's distortion of precedent and underlying policy. The dissent recognized more clearly the relationship between anti-logrolling policy and separation of powers issues and provided practical reasons for restricting the targets of gubernatorial partial vetoes. Consequently, the dissent provided a stronger logical foundation for the conclusion it adopted.

Nevertheless, the *Wisconsin Senate* majority allowed broad Wisconsin partial veto authority. Therefore, the Wisconsin governor could veto digits, letters and words from appropriation bills, even if the resulting text was ungrammatical. The governor could veto inseparable conditions or provisos placed on appropriations, even if legislative policy was altered. Partial vetos could affect legislative policy either positively or negatively.

Events transpiring after *Wisconsin Senate*, however, indicated wide support for change in the scope of Wisconsin partial veto authority. The *Wisconsin Senate* decision met with immediate and continuing criticism from the Wisconsin press,[220] state citizens and many politicians. Many Wisconsin legislators, especially Democrats, criticized the broad partial veto authority upheld in *Wisconsin Senate*. For example, one Democrat claimed that giving one individual—the governor—the power to "promulgate legislation" with extensive partial ve-

217. *Wisconsin Senate*, 144 Wis. 2d at 474-75, 424 N.W.2d at 403.

218. *Id.* at 473-74, 424 N.W.2d at 403.

219. *Id.* at 474, 424 N.W.2d at 403.

220. *See, e.g., One-letter Vetoes Kind of S-c---ary*, Wis. St. J., June 21, 1988, at 7A, col. 1; *Veto Power Needs a New Balance*, (Madison) Capital Times, June 17, 1988, at 14, col. 1; *Court Gives Governor Far Too Much Power*, LaCrosse Tribune, June 16, 1988, at A-4, col. 2; *Item-veto Abuses Must be Corrected*, (Appleton) Post-Crescent, June 16, 1988, at A-4, col. 1; *Nutty Ruling Invites Veto Excesses*, Milwaukee J., June 16, 1988, at 14A, col. 1; *Legislators, Not Court, Must Make the Change*, Racine J. Times, June 16, 1988, at 8A, col. 1.

toes violated every form of government.[221] The partial veto issue, however, transcended party lines. Some Republicans also believed that *Wisconsin Senate* conferred too much power for any chief executive to possess.[222]

For various reasons, however, Governor Thompson and many members of the state Republican party approved of the *Wisconsin Senate* outcome. One Republican legislator cited the benefit of allowing governors to edit legislation for consistency.[223] Governor Thompson's legal counsel approved of a partial veto power that was coextensive with the ability of the state legislature to assemble legislation.[224] Governor Thompson's budget director noted that a broad partial veto permitted deletion of budget items not fully debated by the legislature, thus saving state funds, and allowing the governor to work cooperatively with legislators to modify the state budget to achieve mutual goals.[225]

Although much of the partial veto discussion was phrased in separation of powers terms, other issues complicated the debate. Partisan politics played some role in the controversy, both explicitly and implicitly. Governor Thompson's 290 partial vetoes occurred at a time when a Republican occupied the governor's office but Democrats controlled both houses of the Wisconsin legislature. On the other hand, the legislature simply overrode controversial partial vetoes executed by Governor Thompson's Democratic predecessor; no lawsuits or constitutional amendment efforts ensued.[226] Personal political ambitions, too, were implicated, as Democratic gubernatorial hopefuls poised to challenge Governor Thompson in 1990.[227]

Various participants appeared to be manipulating the partial veto controversy for a variety of reasons. Although separation of powers concerns, partisan politics and personal political ambitions converged in most partial veto discussion, the bottom line was control of the state budget process.

Historically, most partial vetoes of Wisconsin appropriation legislation appear to have been motivated by policy or partisan consid-

221. Interview with Representative David Travis, Wisconsin State Assembly, in Madison, Wisconsin (Apr. 12, 1989).

222. Interview with Representative Randall Radtke, Wisconsin State Assembly, in Madison, Wisconsin (Apr. 7, 1989).

223. Interview with Representative David Prosser, Wisconsin State Assembly, in Madison, Wisconsin (Apr. 7, 1989).

224. Interview with Raymond Taffora, Legal Counsel to Governor Thompson, in Madison, Wisconsin (Apr. 12, 1989).

225. Interview with Richard Chandler, Wisconsin State Budget Director, in Madison, Wisconsin (Apr. 10, 1989).

226. Theobald Interview, *supra* note 44.

227. Wisconsin Assembly Speaker Thomas Loftus will oppose Governor Thompson in the November 1990 Wisconsin gubernatorial election.

erations, rather than by financial concerns.[228] In fact, one prominent member of the current Assembly said that the existing process of tailoring legislation to procure passage produced an "auction atmosphere."[229] Thus, Wisconsin legislative experience seemed to evidence the "logrolling" concerns of early partial veto advocates.[230] Ultimately, regardless of the partisan issues or personal ambitions involved, the expansive partial veto power affirmed by *Wisconsin Senate* raised numerous concerns about the power structure of state government.

Perhaps with mixed motives, on June 30, 1988, Democratic leaders convened a special session of the Wisconsin legislature to consider state constitutional amendments limiting the partial veto authority. Three amendments were proposed at the special legislative session.[231] One amendment[232] would have prohibited the governor from vetoing less than a complete dollar amount as appropriated by the legislature or from vetoing less than a complete section of an appropriation bill. The amendment also would have prohibited veto of sentences or sections of law.[233]

Another amendment[234] proposed allowing the governor to reject individual digits in any appropriation number, but prohibited increases in the amount of any appropriation. Further, the amendment would

228. Gosling, *Wisconsin Item-Veto Lessons*, 46 PUB. ADMIN. REV. 292 (1986). Wisconsin is not unique in this regard; analysis demonstrates that the governors of other states have also used item vetoes or partial vetoes mainly for partisan reasons. *See* Abney and Lauth, *The Line-Item Veto in the States: An Instrument for Fiscal Restraint or an Instrument for Partisanship?*, 45 PUB. ADMIN. REV. 372 (1985); Benjamin, *The Diffusion of the Governor's Veto Power*, 55 STATE GOVERNMENT 99 (1982); Holtz-Eakin, *The Line-Item Veto and Public Sector Budgets*, 36 J. PUB. ECON. 269 (1988); Bellamy, *Item Veto: Shield Against Deficits or Weapon of Presidential Power?*, 22 VAL. U.L. REV. 557 (1988).

229. Rosenthal, *The Legislative Institution: Transformed and at Risk*, in The State of the States 89 (C. Van Horn ed. 1989).

230. *See supra* notes 26-27 and accompanying text.

231. WIS. CONST. art. XII, § 1 states:

> Any amendment or amendments to this constitution may be proposed in either house of the legislature, and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be . . . referred to the legislature to be chosen at the next general election, and shall be published for three months previous to the time of holding such election; and if, in the legislature so next chosen, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the legislature to submit such proposed amendment or amendments to the people in such manner and at such time as the legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the electors voting thereon, such amendment or amendments shall become part of the constitution. . . .

232. S.J.R. 72, 1987-1988 Wis. Legis. (1988).

233. The Wisconsin Senate Committee on Judiciary and Consumer Affairs voted six-to-zero to recommend rejection of 1987 Senate Joint Resolution 72. The amendment never came before the full legislature for a vote. 1 BULLETIN OF THE PROCEEDINGS OF THE WISCONSIN LEGISLATURE, 1987-88 SESS. 181 (1988).

234. S.J.R. 75, 1987-1988 Wis. Legis. (1988).

have prohibited the governor from writing in new appropriation amounts and vetoing individual letters.[235]

A third, least restrictive partial veto amendment[236] passed both the Senate and the Assembly.[237] Several amendments to the proposed amendment were considered and rejected.[238] As approved, the amendment provided that a governor may not veto individual letters in the words of an enrolled bill.

Political realities dictated which of the three partial veto amendments proposed at the 1988 special session ultimately won legislative approval. Early advocates of more extensive partial veto reforms threw their support to the approved amendment in the belief that it, unlike the other proposed amendments, was capable of passage by the legislature and approval by the public.[239]

Political realities may change, however, and both advocates and opponents admitted that subsequent amendments may attempt to limit the partial veto authority even further.[240] In addition to the substantive provisions of the approved partial veto amendment, the amendment also restructured the existing partial veto provisions of the state constitution. In part, this restructuring aimed to facilitate later modifications to the partial veto provisions.

To amend the state constitution, after second passage by the 1989 Wisconsin Legislature, the partial veto amendment had to be approved in a statewide voter referendum. The Wisconsin Senate gave second approval to the amendment on January 26, 1989.[241] Observers had anticipated that the state Assembly would also act quickly in order to

235. The Wisconsin Senate Committee on Judiciary and Consumer Affairs reported 1987 Senate Joint Resolution 75 to the full Senate without recommendation on whether to approve the amendment. 1 BULLETIN OF THE PROCEEDINGS OF THE WISCONSIN LEGISLATURE, 1987-88 SESS. 181 (1988).

236. S.J.R. 71, 1987-1988 Wis. Legis. (1988).

237. The Senate voted 18-14 in favor of the joint resolution; the Assembly vote was 55 in favor, 35 opposed, and two paired. The approved joint resolution then became 1987 Enrolled Joint Resolution 76. 1 BULLETIN OF THE PROCEEDINGS OF THE WISCONSIN LEGISLATURE, 1987-88 SESS. 181 (1988).

238. One amendment would have permitted the governor to reject an appropriation amount and write in a lesser amount. The amendment was rejected by the Senate. Sen. Am. 1 to S.J.R. 71, 1987-1988 Wis. Legis. (1988). Another amendment would have clarified the prohibition against vetoing individual letters by substituting "letters from words, or create a new sentence by rejecting individual words." This amendment was tabled. Assembly Am. 1 to S.J.R. 71, 1987-1988 Wis. Legis. (1988). The most restrictive amendment, also tabled, would have prohibited the governor from vetoing less than a complete legislative concept. Assembly Am. 2 to S.J.R. 71, 1987-1988 Wis. Legis. (1988).

239. Travis Interview, *supra* note 221. Address by Representative Thomas Loftus, University of Wisconsin Law School Legislation Seminar, Madison, Wisconsin (Feb. 9, 1989).

240. Travis Interview, *supra* note 221. Prosser Interview, *supra* note 223.

241. The amendment was reintroduced for second consideration as 1989 Senate Joint Resolution 11 on January 24, 1989. The vote on the amendment was 22 in favor and 11 opposed. SENATE J., 1987-1988 Wis. Legis. 41 (Jan. 26, 1989).

place the amendment on the April 1989 general election ballot. The amendment stalled, however, in the Assembly Rules Committee from the end of January until late October. Finally, on October 31, 1989, the full Assembly gave second approval to the proposed amendment.[242]

Many observers, especially Democrats,[243] agreed that the sweeping partial veto authority created problems that needed to be addressed somehow, even with a "stopgap" constitutional amendment.[244] Legislators who believed that the proposed amendment did not sufficiently restrict the partial veto authority supported the proposal because they believed that some limit had to be placed on the expansive post-*Wisconsin Senate* partial veto authority.[245] On the other hand, critics argued that the partial veto issue was critical and that the constitutional amendment process was moving too fast to permit careful, reasoned action.[246] Despite these concerns, Wisconsin voters ratified the partial veto amendment in the April 1990 referendum.

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242. The amendment was also introduced in the new legislature as 1989 Assembly Joint Resolution 7 on January 20, 1989. To procure speedy action, identical legislation is sometimes introduced in both houses of the Wisconsin legislature to allow both houses to work simultaneously on the same legislation. Following introduction in the Assembly, 1989 Assembly Joint Resolution 7 was referred to the Judiciary Committee. On January 26, 1989, the Judiciary Committee voted six-to-five to recommend adoption of the amendment. The Assembly version of the partial veto amendment was then referred to the Assembly Rules Committee. BULLETIN OF THE PROCEEDINGS OF THE WISCONSIN LEGISLATURE, 1989-90 SESS. 148 (Feb. 4, 1989).

According to T.J. Bolger, assistant to the Assembly Rules Committee chair, the partial veto amendment stalled in the Rules Committee because legislators wanted to divert more attention to a property tax referendum that appeared on the April 1989 ballot. Mr. Bolger expected that the partial veto amendment would come out of the Rules Committee when Democratic leaders felt that the time was right and when unpleasant memories of the defeat of the April 1989 referendum on property taxes had died away. Interview with T.J. Bolger, Administrative Assistant to Wisconsin Assembly Rules Committee Chair Tom Hauke, in Madison, Wisconsin (Apr. 6, 1989).

Some Democrats were surprised by the amendment's slow movement through the Assembly. Wisconsin Senate President Fred Risser speculated that Assembly leaders unilaterally decided to slow the progress of the amendment in the Assembly, in contravention of an earlier agreement between Senate and Assembly leaders to share timing decisions. Senator Risser believed that the Assembly leadership feared that an early partial veto referendum would turn into a referendum on Governor Thompson's popularity and might harm Democratic gubernatorial aspirations. Interview with Senator Fred Risser, Wisconsin State Senate, in Madison, Wisconsin (Apr. 4, 1989).

Placed on the Assembly calendar by the Rules Committee on October 24, 1989, the partial veto amendment passed the Assembly by a wide margin. *See supra* note 18.

243. Some Republicans, however, also believed that the governor enjoyed too much partial veto power. Radtke Interview, *supra* note 222.

244. Risser Interview, *supra* note 242.

245. Travis Interview, *supra* note 221. Senator Risser stated that although no one was really satisfied with the amendment, pragmatically, it was then the only one with a real chance of success. Risser Interview, *supra* note 242.

246. Representative Prosser believed that legislative action on the partial veto amendment failed to reflect a "long view." Prosser Interview, *supra* note 223.

On January 24, 1989, Representative Gregg Underheim offered Assembly Substitute

Following *Wisconsin Senate* and the April 1990 partial veto amendment, four main restrictions applied to exercise of the Wisconsin partial veto. First, only appropriation bills are subject to the partial veto. Second, the appropriation bill text remaining after partial veto must constitute a complete, entire and workable law. Third, the resulting law must be germane to the subject of the partially vetoed appropriation bill. Fourth, single letter vetoes are prohibited. If these conditions are met, then the Wisconsin governor is free to alter broadly legislative appropriations and policy by employing the constitutional partial veto authority.

III. The Future: Containment Strategies

Other solutions less dramatic than amending the state constitution had been proposed to address the perceived imbalance of power created by *Wisconsin Senate*. Eventually, one or more of these proposed solutions may be implemented in conjunction with the constitutional amendment of the partial veto authority. Some legislative leaders advocate issuing the state budget in two parts, one part containing policy and one part containing appropriations.[247] In fact, supporters of broad partial veto authority suggested a two-part budget to legislators unhappy with the post-*Wisconsin Senate* reach of the Wisconsin governor's partial veto pen.[248]

Issuing the budget in two parts would address some concerns about the extent of the partial veto authority. A two part budget would insulate policy initiatives and other substantive directives from the partial veto, thus reducing opportunities for "gubernatorial legislation." Issuing two budget documents would retain most advantages of centralized budget development and evaluation, recognized when omnibus budgets were first adopted in the early twentieth century.[249]

Conversely, splitting a single budget document into two budget documents would produce some fragmentation of the budget process. Rolling everything into one omnibus document has both political and practical advantages. The political advantages of an omnibus budget

On January 24, 1989, Representative Gregg Underheim offered Assembly Substitute Amendment 1 to the Assembly version of the partial veto amendment. Representative Underheim offered the amendment because he was concerned about the speedy, perhaps ill-considered progress of the partial veto amendment through the legislature. Telephone interview with Representative Gregg Underheim, Wisconsin State Assembly (Apr. 12, 1989). The Assembly Judiciary Committee met in executive session on January 25, 1989; committee members voted to reject Representative Underheim's substitute amendment and to recommend adoption of the partial veto amendment. Committee Record, Wisconsin Assembly partial veto amendment. Committee Record, Wisconsin Assembly Judiciary Committee (Jan. 25, 1989).

247. *Wisconsin Veto Flap, Chapter 2*, Governing, Mar. 1988, at 38.

248. Chandler Interview, *supra* note 225; Prosser Interview, *supra* note 223.

249. *See supra* note 23 and accompanying text.

stem from the ability to include items fostering the building of a coalition large enough to secure passage of the budget.[250] The coalition building that characterizes budget adoption also permits passage of substantive legislation that, although beneficial, might never pass otherwise.[251] Of course, an indistinct line distinguishes coalition building from logrolling; however, this very relationship argues for an effective but limited partial veto authority.

The practical advantages of an omnibus budget stem from the ability to construct a "big picture" scenario that includes both program initiatives and the funding to execute those intitiatives. Many legislators believe that it is impossible to construct a budget without including policy items.[252] Other observers note that many people disagree on what constitutes "policy"[253] or conclude that all budget decisions are policy decisions. An omnibus budget provides one way to enhance coordination of a complicated budget framework.

Senate President Fred Risser has proposed a second budget alternative: breaking the state budget into a number of smaller budget bills.[254] Again, policy matters would be protected by isolating them in bills that did not contain appropriations.[255] Many of the same considerations favoring and opposing a two bill budget also apply to Senator Risser's multi-bill budget proposal.

Nonetheless, increased fragmentation of state policy and programs wrought by numerous budget bills might create additional problems. Without an overall framework, enacted appropriations might conflict with related substantive law or other enacted appropriations. Small details might obscure major or crucial budget issues. Relying solely on their own momentum, essential but controversial appropriations might never muster enough support to secure passage. Finally, without the impending threat of "shutting down state government," major portions of the state budget might never be enacted.

Governor Thompson suggested a third alternative to amending the partial veto provisions of the state constitution. He proposed an informal agreement with the legislature whereby he would not veto

250. Although omnibus budget bills could appropriately be characterized as "Christmas trees," the Wisconsin state budget bill is the one bill the state legislature must pass. Concessions are sometimes necessary to secure the support required for passage. Risser Interview, *supra* note 242.

251. Representative Loftus cites Wisconsin's drunk driving law as legislation that never would have passed if not included in the omnibus budget bill. Loftus Address, *supra* note 239.

252. Risser Interview, *supra* note 239.

253. Chandler Interview, *supra* note 225.

254. The 1989 Legislature considered three separate budget bills: 1989 Senate Bill 31, the general executive budget bill; 1989 Senate Bill 32, the natural resources executive budget bill; and Senate Bill 33, the transportation executive budget bill.

255. Milwaukee Sentinel, June 15, 1988, at 1, col. 1.

individual letters, in exchange for tacit permission to write in new, lower numbers to replace vetoed appropriations.[256]

Although the governor's proposal resembled the 1990 partial veto amendment, his proposal was somewhat more permissive. The main difference was that Governor Thompson proposed writing in totally new appropriation amounts, while the partial veto amendment limits governors to manipulating digits already present in an appropriation bill.[257] Some cooperative spirit—missing from the budget drama leading to *Wisconsin Senate*—appeared to permeate Governor Thompson's proposed 1989 budget.[258]

The 1990 partial veto amendment, the suggested budget format revisions, and the governor's power sharing alternative address the most controversial vetoes challenged in *Wisconsin Senate*: vetoes which create new text by vetoing and recombining letters and words—vetoes which, in effect, permit the governor to legislate.[259] None of these alternatives, however, fully addresses legitimate power balance issues intertwined with various political issues and partisan issues in the partial veto controversy.

Any formal or informal partial veto reform would have some effect on the ability or willingness of the current governor, and perhaps others, to execute partial vetoes. The proposed reforms would produce different effects on the balance of power between the Wisconsin legislature and the Wisconsin governor.

Splitting the current omnibus budget into two or more budget documents would remove from legislators some pressure to pass all necessary state appropriations. Splitting the budget would also remove the governor's leverage to check the budgetary behavior of the legislature by threatening to veto an entire budget. Ironically, perceived need for this type of leverage motivated adoption of the original Wisconsin partial veto amendment in 1930.[260] A third result of splitting the budget would be complication of the immense task of coordinating

256. Milwaukee Sentinel, June 29, 1988, 2, col. 7.

257. It is unclear whether the governor still supports this alternative; his representatives advocate individual letter vetoes. Chandler Interview, *supra* note 225. Taffora Interview, *supra* note 224.

258. Senator Risser attributed the nature of the 1989 budget to Governor Thompson's upcoming 1990 reelection bid. Risser Interview, *supra* note 242.

The history of the partial veto amendment demonstrates potential pitfalls of understanding and communication. Before convening the special session at which the 1990 partial veto amendment received first approval, Democratic legislative leaders met with Governor Thompson's representatives to discuss partial veto amendment alternatives. At that time, the Governor's representatives allegedly agreed to an amendment prohibiting the veto of individual letters. The Governor and his representatives, however, eventually opposed the partial veto amendment. Theobald Interview, *supra* note 44; Risser Interview, *supra* note 242; Taffora Interview, *supra* note 224.

259. Travis Interview, *supra* note 221.

260. *See supra* notes 26-27 and accompanying text.

state spending, revenues, policy initiatives and ongoing programs. Effective further alteration of the partial veto power needs to address these concerns to ensure that Wisconsin residents have reasonable protection from special legislative interests, unbridled gubernatorial whims, or chaotic state government.

The compromise alternatives represented by the partial veto amendment and Governor Thompson's negotiation proposal come closer to allowing an integrated but balanced state budget process like that envisioned by earlier advocates of the partial veto and the omnibus budget. Governor Thompson's proposed solution would have depended on the voluntary cooperation of future governors. The small number of legislative votes necessary to sustain partial vetoes[261] means that the governor's solution provided no real check on gubernatorial power. His proposal, for that reason, was less desirable than the partial veto amendment.

Further, recent developments indicate that the relatively "quick fix" afforded by the 1990 partial veto amendment has not resolved the partial veto controversy. In March 1990, Wisconsin State Senator Fred Risser and Wisconsin State Representative David Travis filed a complaint in United States District Court for the Western District of Wisconsin, seeking declaratory and injunctive partial veto relief. The complaint names Governor Tommy Thompson both individually and in his official capacity, and alleges, among other causes of action, due process, equal protection and first amendment grounds. The complaint seeks to enjoin Governor Thompson and his successors from drafting and enacting any provision of law not passed or agreed to by the members of the Wisconsin Legislature.[262] Like the *Wisconsin Senate* litigation, the federal lawsuit probably represents an assortment of motives and reflects a variety of substantive concerns.

This Comment approves of the ratification of the 1990 partial veto amendment to the Wisconsin Constitution. The 1990 amendment is a step in the right direction. The 1990 amendment allows the legislature to retain some control over the policy content of omnibus appropriation bills, yet permits the governor to control special interest appropriations.

Further, this Comment also advocates adoption of a second amendment that would further restrict partial veto of Wisconsin appropriation bills. The policy consequences of vetoing single words, especially "not," are potentially as severe as vetoing single letters.[263] Because the present scope of Wisconsin partial veto authority continues to raise genuine separation of powers issues as evidenced by the recently

261. *See supra* note 9.

262. Complaint for Declaratory and Injunctive Relief, Risser v. Thompson, No. 90-C-02155 (W.D. Wis. filed Mar. 26, 1990).

263. Prosser Interview, *supra* note 223.

filed federal lawsuit, legislative attention to the partial veto controversy should not cease with passage and ratification of the 1990 constitutional amendment, prohibiting only single letter partial vetoes. The ability of federal courts to provide an effective partial veto resolution may be limited by the nature of available remedies. Instead, careful legislative consideration, with meaningful opportunities for public participation, should provide clear and workable additional limits on the Wisconsin partial veto authority.

The partial veto controversy continues to present difficult, complicated issues. Effectively resolving the controversy will require thoughtful examination and, eventually, policy decisions accompanied by legislative commitment. Further, effective reform requires looking forward, not backward. State legislatures in general, and the Wisconsin legislature in particular, are different institutions in 1990 than they were in 1930. Career legislators, supported by greatly expanded technical support staffs, now work year-round with larger, more complicated state functions and budgets.[264] Clear vision and analysis, departing perhaps from the letter but not the spirit of earlier days, is required to structure an appropriate partial veto authority for the 1990s and beyond.

The heart of the Wisconsin partial veto controversy consists of defining limits. To give Wisconsin governors reasonable veto authority, yet prevent abuses wrought by overreaching, legislators and the governor might reach a workable compromise in a further partial veto amendment by prohibiting veto of grammatical units smaller than sentences and permitting veto of digits only from appropriation amounts. "Boondoggles" would remain subject to the governor's veto pen, but the most creative and objectionable partial vetoes executed by Governor Thompson in 1988 would be prohibited.

IV. Conclusion

An imbalance of power between the executive and legislative branches of Wisconsin state government continues to characterize its budget process. The imbalance derives mainly from judicial interpretations of Wisconsin's historically broad partial veto authority. According to those interpretations, a Wisconsin governor may veto digits, numbers, punctuation and words contained in appropriation bills.

264. Rosenthal, *supra* note 229. Partial veto or item veto controversies have recently stirred in numerous states in addition to Wisconsin. *See* Pottoroff, *Political Stew: Item Veto Issues Bubbling to the Top in State Court Jurisdictions*, 1 Emerging Issues in St. Const. 121 (1988). Of course, analysts have long debated whether the United States President should be conferred with some type of partial veto authority. For arguments on both sides of the national issue, see *Symposium on the Line-Item Veto*, 1 Notre Dame J. L. Ethics & Pub. Pol. (1985).

Wisconsin's current constitutional check on its governor's partial veto authority is veto override by two-thirds of each house of the state legislature. For political reasons, override attempts often fail. As few as twelve state senators can prevent a veto override. Consequently, Wisconsin's budgetary separation of powers balance is skewed toward the governor. Partisan and political issues also complicate the state budget process. Action is required to restore the balance to what was intended by the constitutional framers, to what is desired by state citizens, and to what is healthy for state government.

Therefore, this Comment advocates further study and discussion of the separation of powers issues raised by the current broad partial veto authority. This Comment also recommends appropriate further amendment of the partial veto provisions of the Wisconsin constitution.

MARY E. BURKE