Board of Education.) In return, Weld gave gay activists carte blanche in his administration, appointing several homosexuals to state posts. Among them was LaFontaine—who several years ago was spotted in the periphery of an ACT UP protest in Boston in which homosexual militants pelted newly ordained Catholic priests (and their relatives) with condoms as they left a church induction ceremony. Now LaFontaine's activism is funded by the taxpayer. As the man behind the "Gay Youth Pride" rally, he looked on like a proud uncle as student after student stood on the steps of the State Capitol to rail against "homophobia" and praise Massachusetts for its "diversity."

At the rally, LaFontaine and his young followers celebrated that a full 100 Massachusetts high schools—one third of the state's total—now have homosexual-affirming "gay-straight alliance" clubs. His goal: a GSA in the remaining 200 schools in Massachusetts—most in more tradition-minded regions of the state. There will be plenty of taxpayer money to reeducate the masses. The state budget for pro-homosexual youth programs grew year after year under Weld. And as a parting act, he promised LaFontaine a $1 million budget to administer his "gay youth" agenda next year (an amount that was ultimately approved by Weld's successor, Governor Paul Cellucci, who appears even more sympathetic to the homosexual cause than Weld). The only good news for the state's beleaguered pro-family movement is that under a parental rights law passed last year (coupled with good regulations approved by Silber), students will likely have to tell their parents of their involvement in GSAs, and parents will at least receive advance warning of pro-gay events in their child's school.

How far has taxpayer-funded homosexual promotion gone in Massachusetts schools? A clue can be found in a 76-page manual entitled "Gay/Straight Alliances: A Student Guide," produced by the Massachusetts Department of Education. The publication might have been written by Queer Nation, so blatant is its promotion of open and proud homosexuality for young people. On page nine, students are told to "Display posters in your school that educate people about homosexuality and homophobia." On page 25, the manual innocently recommends Tony Kushner's play, *Angels in America*, without mentioning that the play is laden with crude gay sexual references and features simulated sodomy and nudity (in addition to cliché-ridden leftist diatribes). On page 26, the manual approvingly recounts a visit by some GSA members from Newton North High School to three eighth-grade classes at their former middle school: "The group members were exuberant . . . knowing that they had helped to break the ignorance, silence and fear surrounding issues of homophobia at their alma mater." On page 29, students are instructed how to plan "Awareness Days"—the same propaganda events that set off the Beuclers and their son. The manual reprints a "sample agenda" from a 1993 "Gay and Lesbian Awareness Day" at Newton South High School, which included a workshop on "Transgender Issues." Apparently in Massachusetts, it's never too early to indoctrinate students.

Back in May, at the "Gay Youth Pride" rally in Boston, the mood was festive as an adult announced that "this is a no-smoking, non-alcoholic event"—since it was sponsored by the Health Department. Sadly, the state's touching concern for teen welfare does not extend to enlightening them on the manifold risks of homosexual behavior: syphilis, amebiasis, hepatitis A and B, AIDS. Most boys I interviewed at the rally had no clue about threats to their physical well-being posed by "gay" sex practices—except to mouth "safer sex" rhetoric about wearing a condom. The kids did seem to be well-versed in "gay" activism, though. Andy Anello, a 17-year-old junior from Canton High School, recalled how members of his GSA, called the "Rainbow Alliance," put pink triangles on every student locker as part of "Free Your Mind Week" at the school. Anello's mind may have been free, but like many at the rally, his body bore the marks of an odd form of conformity—with an earring piercing his right eyebrow, and two on both ears. He and the other GLBT? kids displayed the telltale signs of youthful rebellion, 90's-style. Now along comes the government with its "gay-straight" school movement to infuse them with homosexual ideology and "pride." It's heady stuff for alienated, confused teens looking for meaning in their lives and a place to fit in.

It is one thing to ban abuse in schools—or teach students to respect one another and have manners. But it is quite another for the state to promote an unnatural homosexual "identity" with its attendant risks as "normal" to teenagers, while shielding them from opposing viewpoints. And what about gay activists as taxpayer-financed role models? At the homosexual "prom" later that evening, I witnessed a spectacle that would have made George Orwell shudder. Sterling Stowell, executive director of the sponsoring organization, the Boston Alliance of Gay and Lesbian Youth—and a transvestite—was carefully guarding the doors to City Hall to ensure that only approved press (i.e., no "homophobes") and students could enter. There was Mr./Mrs. Stowell, decked out in a colorful scarf-like gown, gaudy diamond-shaped earrings and full makeup—serving as Chief Protector of the "at risk" schoolkids! The gays are in charge in Massachusetts, and I fear for the children.

Peter LaBarbera is publisher of the Lambda Report on Homosexuality, *which monitors the "gay rights" movement.*

GOVERNMENT

Reining in the Feds

by William J. Watkins, Jr.

On June 26, 1997, the Supreme Court dodged the constitutional questions surrounding the Line Item Veto Act. In *Raines* v. *Byrd*, the Court claimed it had no jurisdiction and dismissed the complaint. Federal courts only have jurisdiction over a dispute if it is a "case" or "controversy." An element of the case or controversy requirement is that the party bringing the suit must have standing, which is defined as "a personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief."

The senators and congressmen questioning the constitutionality of the Line Item Veto Act cited the case of *Coleman* v. *Miller*, in which the Court upheld standing for Kansas state legislators protesting actions of the state's lieutenant governor. When the state senate dead-

locked on ratification of the Child Labor Amendment to the federal Constitution, the lieutenant governor cast the deciding ballot for the amendment. State senators and house members sued, arguing that the legislature had not actually ratified the amendment. In *Raines* v. *Byrd*, the Court limited *Coleman* to the proposition that "legislators whose votes would not have been sufficient to defeat (or enact) a specific legislative act have standing to sue if that legislative action goes into effect (or does not go into effect), on the ground that their votes have been completely nullified." Though Senator Byrd et al., made a compelling argument that the Line Item Veto Act effectively nullifies their votes on legislative matters, the High Court preferred to wait for a suit involving a private plaintiff suffering a loss of federal benefits as a result of the line item veto.

When the President first used his new power on August 11, 1997, a plaintiff with standing was undoubtedly created, although, as we go to press, a suit has yet to be filed. Nonetheless, it is just a matter of time before a private challenge to the Line Item Veto Act reaches the Supreme Court.

Judging from the plain language of the Constitution and recent Supreme Court decisions, the Line Item Veto Act will probably be struck down once the proper case reaches the Court. The Act gives the President five days after signing a bill into law to "cancel" any discretionary budget item, any new "entitlements" for individuals and state governments, or any tax benefit limited to 100 or fewer beneficiaries.

Signing the Act in April 1996, President Clinton promised to scrutinize "the darkest corners of the federal budget." Running for President, Bob Dole claimed the line item veto would "put Washington on a pork-free diet." As is so often the case in the Imperial City, the two party leaders praised the ends without considering whether the means are constitutional.

Constitutionally, the Act has two major problems. First, it violates the Constitution's Presentment Clause:

> Every Bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a Law, be presented to the President of the United States; if he approves he shall sign it, but if not he shall return it, with his objections to that House in which it shall have originated . . .

President Washington interpreted the Presentment Clause as follows: "From the nature of the Constitution, I must approve all parts of a Bill, or reject it in toto." All of Washington's successors have adopted the same interpretation. The Line Item Veto Act turns this established and logical principle on its head. Supporters of the Line Item Veto Act concede that if the President could strike provisions before he signed a bill into law, the Act would clearly be unconstitutional, and so the Act instead requires the President to sign the bill into law and then "cancel" the provisions he disagrees with. Such a scheme shows what little respect our elected officials have for the Constitution.

The Presentment Clause also provides that a bill must pass both houses of Congress before it is presented to the President for his signature or rejection. This is referred to as the bicameral requirement. The Line Item Veto Act violates this requirement because the bill that passes both houses and is signed by the President does not become law if the President uses the power of cancellation. Congress might pass an A-B-C bill, but what becomes law after cancellation could be an A-B, A-C, or B-C bill—in other words, a bill never presented to the President. As the Supreme Court declared in *INS* v. *Chada*, the Presentment Clause "represents the Framers' decision that the legislative power of the Federal government be exercised in accord with a single, finely wrought and exhaustively considered, procedure."

Second, the Act unconstitutionally transfers the legislative power of repeal to the President. When President Truman issued an executive order seizing the nation's steel mills during the Korean War, the Supreme Court, striking down the order, emphatically declared: "In the framework of our Constitution, the President's power to see that the laws are faithfully executed refutes the idea that he is to be a law maker." But the cancellation power granted by the Act effectively makes the President the country's most powerful law maker. Clearly, this power of cancellation is the power of repeal, which the Constitution vests in the Congress.

Some supporters of the Line Item Veto Act argue that, in spite of its name, the Act does not establish a line item veto. They claim that all spending is discretionary, and thus the President can simply spend less than Congress appropriates, an action called "impoundment." Impoundment is not mentioned in the Constitution, but it is an old executive practice. Perhaps the most famous impoundment was when President Jefferson refused to spend $50,000 appropriated for gunboats since the threat of war had passed. In recent times, Presidents have aggressively used impoundment. President Kennedy cut spending by six percent through impoundment; President Johnson impounded five billion dollars, which in the 1960's was real money. But when a weakened President Nixon tried to impound 12 billion dollars, Congress enacted the Congressional Budget and Impoundment Control Act of 1974, which requires legislative approval of executive decisions to end or reduce programs for which funds are authorized.

The argument that the Line Item Veto Act simply revives impoundment is pure sophistry. For instance, the Act gives the President the power to cancel limited tax benefits. A tax break is obviously not an appropriation to be withheld. Canceling a limited tax benefit is the repeal of a tax law; it has nothing to do with impoundment. This argument aside, as mentioned earlier, the Constitution does not refer to impoundment.

Although the Line Item Veto Act should be struck down by the Supreme Court as a violation of the Presentment Clause and a delegation of legislative power to the executive, its proponents do identify problems in modern federal lawmaking. Hamilton argued in *Federalist* 73 that the veto power serves two purposes: to shield the executive against congressional encroachments and to furnish "additional security against the enactment of improper laws." The latter function, line item veto partisans correctly point out, has been eviscerated by Congress.

In the early days of the Republic, Congress often passed separate bills for pronouncing, enforcing, and collecting a tax. When Congress authorized the formation of the departments of War, Foreign Affairs, and Treasury, three separate acts were passed. Today, bills rarely stick to a single subject. If Newt Gingrich and company were to pass a bill creating a new department, it would no doubt contain highway projects, subsidies to the well-connected, and sundry other unre-

lated matters. This practice, often called logrolling, places the President in an awkward position. Although he might not favor the highway projects in the bill, he must sign the bill if he wants the new department created.

In other words, logrolling has eviscerated the President's veto power. But the evisceration did not begin with the Congressional Budget and Impoundment Control Act, as many neoconservatives argue. The problem began with the lawlessness of the United States government in the War Between the States, when Congress began to add riders to appropriations bills. The President, although he opposed the riders, was forced to sign the bill if he wanted to keep the war machine rolling. Because of such practices, President Grant asked Congress for a constitutional amendment "to authorize the Executive to approve of so much of any measure passing the two Houses of Congress as his judgment may dictate without approving the whole." Other Presidents have echoed Grant's plea.

The problem, in part, boils down to the nature of a bill. If modern legislators looked upon bills as the first Congress did (with its separate bills to enact, enforce, and collect taxes), there would be no problem. Unfortunately, logrolling is so common today that no one thinks it improper. Although Congress has enacted internal rules to keep bills to a single subject, there are far too many escape hatches. The answer to the problem is a congressional rule with teeth that forces Congress to limit bills to a single subject; failing that, a single subject amendment to the Constitution may be required.

Either option would solve the problems that the line item veto is meant to remedy and avoid the problems it creates. With a line item veto, there is still an incentive for congressmen to pass bills including such frivolities as funding for the Lawrence Welk Museum and honeybee subsidies. If bills were kept to a single subject, it would become harder to hide such waste. Under a single subject rule or amendment, congressmen could not claim ignorance of the contents of a mammoth appropriations bill, and hence would become more accountable.

Moreover, the line item veto aggrandizes the executive, while a single subject rule or amendment would not. For instance, the President can use the line item veto to punish individual senators and congressmen who do not cater to his wishes. Critics observe that similar results are possible with a single subject rule or amendment. The President could sign the bills of his party and veto the bills of the opposition. But unless Congress passes separate bills for Lawrence Welk and the honey bees, the danger is nothing compared to the perils of the line item veto.

Of course, the only permanent solution to our current trouble is to put Leviathan back in the cage of the Constitution. If the federal government obeyed the Constitution, there would be no taxpayer-financed subsidies for beekeepers, no Ponzi schemes like Social Security. Although a single subject rule or amendment is no panacea, it is a step in the direction of constitutional government.

William J. Watkins, Jr., is a law student at the University of South Carolina School of Law and a member of the staff of the South Carolina Law Review.

The Committee of 50 States

by Joseph Stumph

The Committee of 50 States, of which I am founder and president, is currently trying to find a state sponsor who would propose a new federal government and Constitution. Several state legislators in Idaho, Utah, and Arizona have expressed interest in our work, and they realize that this notion of forming a new government and a more equitable compact between the 50 sovereign states and the federal government is not as far-fetched as it might initially seem. A righteous and moral people will always exhaust all lawful remedies to tyranny before, in the words of Thomas Jefferson, refreshing the "tree of liberty" with "the blood of patriots and tyrants." Exploring these options is exactly the purpose of my committee. If it is not inconceivable that American citizens could soon be extradited to U.N. courts, as it certainly is not, then we should surely view the exercise of our constitutional rights as a legitimate option and a possible course of action.

The Preamble to the Constitution reads: "We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America." "We the People" obviously did not mean the whole people of the entire nation but the people acting through their individual state delegations. Unless the people of at least nine of the existing 13 states in 1787 ratified the Constitution, our present federal government could not and would not have been created.

The objective in getting at least nine states to ratify the Constitution was to form a union "more perfect" than the one which the states had established on March 1, 1781, under the "corporate" charter they called the Articles of Confederation. And such was not a difficult task, for the federal government under those Articles had led to chaos. The Articles had led to a most *imperfect* union.

Once the requirement of Article VII of the Constitution was met, and nine states joined together in a new confederation, a new federal government was formed, whether or not it was more perfect than the one automatically dissolved under the Articles. What happened to the old government that existed under the Articles of Confederation when the Constitution went into effect with its ratification by New Hampshire on June 21, 1788? The new Constitution automatically dissolved an existing union and fired all officers or representatives working under it, but this only occurred in the states which ratified the new compact. Under the constitutional proposal it was possible that four states might never join in the new union and would continue to function as an independent country, or rather as four independent countries, under the Articles. One of the remaining four, Rhode Island, did exactly this for almost two years, finally joining the union on May 29, 1790. North Carolina stayed out of the union for 17 months, not joining until November 21, 1789.

When the first nine states joined in a new alliance, league, or confederation, did they give up their sovereignty to the new government? Not at all. They merely delegated a few limited powers to the new entity. These nine states, later 13, and today 50, did only that which many of us do occasionally in business.