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## Constitutional Law - Wyoming's Line Item Veto: Allowing the Governor to Legislate - Management Council of the Wyoming Legislature v. Geringer

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## Case Notes

### CONSTITUTIONAL LAW—Wyoming's Line Item Veto: Allowing the Governor to Legislate? *Management Council of the Wyoming Legislature v. Geringer*, 953 P.2d 839 (Wyo. 1998).

#### INTRODUCTION

On June 20, 1997, Wyoming Governor Jim Geringer vetoed portions of House Enrolled Act 2 (HEA 2) and set into motion a controversy over his line item veto power.<sup>1</sup> HEA 2 was the legislature's response to the Wyoming Supreme Court's ruling that the Wyoming public school finance system was unconstitutional.<sup>2</sup> The court had ordered the legislature to achieve constitutional compliance in the school funding system by July 1, 1997.<sup>3</sup>

The Wyoming Constitution, Article 4, Section 9, allows for a gubernatorial line item veto.<sup>4</sup> The constitution dictates that "[t]he governor shall have power to disapprove of any item or items or part or parts of any bill making appropriations of money or property embracing distinct items."<sup>5</sup> The governor vetoed portions of HEA 2 that did not contain appropriations, but rather were substantive in nature.<sup>6</sup> He believed his veto power extended to all items within appropriations bills and not just the appropriations themselves.<sup>7</sup> The governor vetoed the provisions in order to: (1) comply with the mandates of the Wyoming Supreme Court in *Campbell County School District v. State*, (2) avoid unintended fiscal problems and balance the budget, (3) protect the executive department from unconstitutional infringements upon its power, and (4) protect the education of Wyoming school children.<sup>8</sup>

The Management Council of the Legislature disagreed with the gover-

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1. Brief for Appellant at 2, *Management Council of the Wyoming Legislature v. Geringer*, 953 P.2d 839 (Wyo. 1998) (No. 97-307) [hereinafter Brief for Appellant] (on file with *Land and Water Law Review*).

2. *Campbell County Sch. Dist. v. State*, 907 P.2d 1238 (Wyo. 1995). See also *Management Council*, 953 P.2d at 840. For a detailed discussion of school finance issues in Wyoming, see Michael Heise, *Schoolhouses, Courthouses and Statehouses: Educational Finance, Constitutional Structure and the Separation of Powers Doctrine*, 33 LAND & WATER L. REV. 281 (1998).

3. *Campbell County Sch. Dist.*, 907 P.2d at 1280.

4. WYO. CONST. art. IV, §9.

5. *Id.*

6. *Management Council*, 953 P.2d at 841.

7. Brief for Appellee at 49, *Management Council of the Wyoming Legislature v. Geringer*, 953 P.2d 839 (Wyo. 1998) (No. 97-307) [hereinafter Brief for Appellee] (on file with *Land and Water Law Review*).

8. *Id.*

nor's interpretation and filed a complaint for declaratory judgment asking that the vetoes be declared unconstitutional.<sup>9</sup> The district court certified the case to the Wyoming Supreme Court.<sup>10</sup>

Wyoming's highest court, in a unanimous decision, declared the vetoes constitutional, holding that the chief executive possesses the line item veto power and can wield it on any portion of any bill that makes appropriations.<sup>11</sup> The Court relied on the plain and unambiguous language of Article 4, Section 9 of the Wyoming Constitution in arriving at its decision.<sup>12</sup>

This case note examines the *Management Council* decision and its possible ramifications for the separation of power between the governor and the legislature. This note will give a brief history of the state line item veto and take a cursory look at other state line item veto provisions. Lastly, the note will speculate about future impacts the ruling might have on legislative action.

## BACKGROUND

### *History of the Line Item Veto*

The partial veto<sup>13</sup> is not a state constitution novelty. The line item veto first appeared during the post-Civil War years.<sup>14</sup> Wyoming's partial veto power was adopted during its constitutional convention in 1893.<sup>15</sup> By the early twentieth century, thirty-six states allowed their governors to veto items within legislation.<sup>16</sup> The most recent state to adopt the line item veto was Iowa, in 1968,<sup>17</sup> bringing the number of states with the line item veto to

9. Brief for Appellant, *supra* note 1, at 2-3.

10. *Id.* at 3. The "standing to sue" issue, also decided by the court, is not discussed in this case note.

11. *Management Council*, 953 P.2d at 844.

12. *Id.* at 843.

13. The term "veto" has been traced from the power of the tribunes of the plebs in ancient Rome to annul or suspend the acts of other public authorities. From the establishment of the Roman tribune, that official had the right of intercession (*intercessio*), to cancel any command of the consul which infringed the liberties of a citizen; and this was gradually extended to other administrative acts and even to decrees of the senate. The word *veto* (I forbid) was at least occasionally used by the tribune in such cases. But historically what is called the veto power of American executives is derived from the legislative power of the British Crown. See John A. Fairlie, *The Veto Power of the State Governor*, 11 AM. POL. SCI. REV. 473, 473 (1917).

14. Richard Briffault, *The Item Veto in State Courts*, 66 TEMP. L. REV. 1171, 1176 (1993). The line item veto was first developed in the Constitution of the Confederate States of America, but was never used by the President of the Confederacy. It was immediately adopted after the Civil War in Georgia and Texas. *Id.* at 1176 n.19.

15. See Brief for Appellant, *supra* note 1, at 24-25.

16. Briffault, *supra* note 14, at 1177.

17. *Id.*

forty-three.<sup>18</sup>

*Line Item Veto in America*

Not all governors have the same veto power. Forty-two states limit their gubernatorial item veto to appropriations bills only.<sup>19</sup> Twenty-six states allow the governor to veto language within appropriation bills as well as dollar appropriations.<sup>20</sup> Seventeen states limit the governor's partial veto to appropriation dollar amounts.<sup>21</sup> Additionally, of the forty-three governors, nine are allowed to reduce the amount of an appropriation.<sup>22</sup> Washington is the only state where the governor enjoys line item veto power over all legislation.<sup>23</sup>

*Line Item Veto in Wyoming*

Wyoming's partial veto had been at issue only once prior to the *Management Council* case. In the case of *State ex rel. Jamison v. Forsyth*, however, the Wyoming Supreme Court did not rule on the limits of the governor's line item veto power.<sup>24</sup> The case involved an appropriation of \$15,000 to the State Geologist.<sup>25</sup> When the bill arrived on Governor Joseph Carey's desk, he approved \$10,000 and disapproved \$5,000.<sup>26</sup> His veto message indicated that double the appropriation from the previous year was more than sufficient to carry on the office for the next two years.<sup>27</sup>

Shortly thereafter, the State Geologist presented an outstanding bill to the State Auditor for five dollars.<sup>28</sup> The Auditor, uncertain of the legality of the veto, refused to pay the bill.<sup>29</sup> The court concluded that since at least \$10,000 was appropriated and as long as that appropriation was sufficient to cover the five-dollar warrant, further constitutional interpretation was unnecessary.<sup>30</sup> The court wrote: "we ought not to assume the delicate responsi-

18. THE COUNCIL OF STATE GOVERNMENTS, THE BOOK OF STATES, 22-23 (1996-97). Seven states do not have a line item provision: Indiana, Maine, New Hampshire, Nevada, North Carolina, Rhode Island and Vermont. *Id.* North Carolina is the only state in the union which has provided no veto power to its governor.

19. *Id.*

20. *Id.* at 98-100. In Hawaii, the governor can reduce items in executive appropriation measures but cannot reduce, nor individually veto, amounts appropriated for the judicial or legislative branches. *Id.* at 100.

21. *Id.*

22. *Id.*

23. Briffault, *supra* note 14, at 1175-76.

24. 133 P. 521 (Wyo. 1913).

25. *Id.* at 522.

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.* at 532.

bility of deciding whether the Governor, in this instance, has or has not acted, or attempted to act, in excess of the authority conferred by the Constitution."<sup>31</sup> It would take eighty-five years and the case of *Management Council v. Geringer* for the line item veto to be challenged again.

While challenges to Wyoming's line item veto have been rare, challenges in other states are quite common.<sup>32</sup> In other states that have a line item veto, the tug-of-war between the governor and the legislature has been a "fertile source of state constitutional litigation."<sup>33</sup> One source estimates that there were 120 state line item veto cases from the nineteenth century through 1984.<sup>34</sup> Over twenty-five state supreme court cases have defined the line item veto between 1985 and 1992.<sup>35</sup>

### *Line Item Veto and Separation of Powers in State Government*

The controversy that frequently surrounds the gubernatorial line item veto is often based on the fear that the item veto might "enhance the influence of the executive over the legislature so as to violate the principle of separation of powers."<sup>36</sup> President Taft voiced great concern about a proposed federal line item veto, predicting it might have an unwanted effect on the delicate balance of federal power:

While for some purposes, it would be useful for the Executive to have the power of partial veto, if we could always be sure of its wise and conscientious exercise. I am not entirely sure that it would be a safe provision. It would greatly enlarge the influence of the President, already large enough from patronage and party loyalty and other causes.<sup>37</sup>

In the most liberal interpretations of state constitutional item veto provisions, the governor determines the parameters of his veto power.<sup>38</sup> Concern over the separation of powers is greatest in this situation because it allows for gubernatorial legislating.<sup>39</sup> The "executive-centered" item veto "dramatically shifts the balance of power between the legislature and the executive and gives the governor considerable capability to engage in uni-

31. *Id.* at 528.

32. Briffault, *supra* note 14, at 1172.

33. *Id.*

34. *Id.*

35. *Id.*

36. Glen Abney & Thomas P. Lauth, *Line Item Veto in the States: An Instrument for Fiscal Restraint or an Instrument for Partisanship?*, 45 PUB. ADMIN. REV. 372, 373 (1985).

37. *Id.*

38. Briffault, *supra* note 14, at 1175. Wyoming is arguably one of these states.

39. *Id.*

lateral lawmaking.”<sup>40</sup>

The “executive-centered” item veto is most prevalent in Wisconsin, where the state constitution and statutory law allow gubernatorial item vetoes on specific amounts within appropriations bills and partial veto of language within the appropriations bills.<sup>41</sup> One commentator argues such power leads to “creative writing” by the governor; “with the swipe of a veto pen, a proscription can be transformed into a prescription—a ‘shall not’ easily turned into a ‘shall.’”<sup>42</sup> Any word or letter within an appropriations bill in Wisconsin may be selectively stricken.<sup>43</sup> Wisconsin’s item veto power has been criticized as being too broad and as having created an imbalance of power between the governor and the legislature.<sup>44</sup>

Governor Jim Geringer convened a special session of the Wyoming Legislature in 1997 in response to the Wyoming Supreme Court decision in *Campbell County School District v. Wyoming*.<sup>45</sup> The *Campbell County* decision required the Wyoming legislature to design a “proper” educational package for all Wyoming children.<sup>46</sup> The design of this “basket of educational goods” required nearly identical offerings from district to district.<sup>47</sup> The court ordered a very specific package design be followed.<sup>48</sup>

The Legislature’s solution passed both houses and was sent to the governor in the form of HEA 2. The Legislature adjourned shortly after passing the bill. Because the Legislature was no longer in session, the governor was unable to return the bill, with changes, to the full body. Therefore, he sent the bill within fifteen days, with his objections, to the secretary of state. The governor sent his veto message pursuant to law, and exercised what he perceived as his constitutional authority to veto portions of HEA 2 that did not encompass appropriations and that were substantive in nature.<sup>49</sup>

#### PRINCIPAL CASE

The court in *Management Council* held that the governor possesses the “authority to veto substantive provisions of *any bill making appropriations*,

40. *Id.*

41. *Id.*

42. James J. Gosling, *Wisconsin Item-Veto Lessons*, 46 PUB. ADMIN. REV. 292, 293 (1996).

43. *Id.*

44. Briffault, *supra* note 14, at 1185; *see also infra* note 80 and accompanying text.

45. *Campbell County Sch. Dist. v. Wyoming*, 907 P.2d 1238 (Wyo. 1995).

46. *Id.* at 1279.

47. *Id.*

48. Brief for Appellant, *supra* note 1, at 4-5.

49. *Management Council of the Wyoming Legislature v. Geringer*, 953 P.2d 839, 841 (Wyo. 1998)

even though the vetoed substantive provision does not appropriate money.”<sup>50</sup> Rejecting the offers of both the appellants and the appellee to look to other states for help interpreting the Wyoming Constitution, the court instead focused on the plain language of the Wyoming Constitution.<sup>51</sup>

The court first relied on the primary principle underlying interpretation of statutes or constitutions—intent,<sup>52</sup> referring to this type of interpretation as a Wyoming tradition.<sup>53</sup> Even though the Management Council and the governor called for constructive interpretation,<sup>54</sup> the court found the language both plain and unambiguous, leaving no room for construction.<sup>55</sup> The court noted that when interpreting constitutions, it will be presumed that what is plainly articulated is what is intended: “We are not at liberty to presume that the framers of the constitution, or the people who adopted it, did not understand the force of language.”<sup>56</sup>

The court then turned to grammar, noting the slight irony of relying on principles of grammar when resolving a school reorganization issue.<sup>57</sup> It cited the United States Supreme Court in support of its use of grammar as the hinge of the case: “This Court naturally does not review congressional enactments as a panel of grammarians; but neither do we regard ordinary principles of English prose as irrelevant to a construction of those enactments.”<sup>58</sup>

The court concluded that the phrase “making appropriations of money or property embracing distinct items” is used as a modifier of “bill” because of its placement directly after “bill.”<sup>59</sup> The court noted that had members of the Wyoming Constitutional Convention meant to narrow the governor’s line item veto power, the Constitution would have read, “[i]n any bill, the governor shall have power to disapprove of any item or items or part or parts making appropriations of money or property.”<sup>60</sup> However, the Constitution was not drafted as such, and the court ruled that the governor could

50. *Id.* at 846 (emphasis added).

51. *Id.* at 844.

52. *Id.* at 843.

53. *Id.* The court noted that a century ago it said, “[t]he primary principle underlying an interpretation of constitutions or statutes is that the intent is the vital part, and the essence of the law. Such intent, however, is that which is embodied and expressed in the statute or instrument under consideration.” *Id.* (quoting *Rasmussen v. Baker*, 50 P. 819, 821 (Wyo. 1897)). See also *Campbell County Sch. Dist. v. State*, 907 P.2d 1238, 1257 (Wyo. 1995).

54. *Management Council*, 953 P.2d at 843.

55. *Id.*

56. *Id.* (citing *Rasmussen v. Baker*, 50 P. 819, 821 (1897)).

57. *Id.* at 843-44.

58. *Id.* (citing *Flora v. United States*, 362 U.S. 145, 150 (1960)).

59. *Id.* at 842. See also *supra* note 4 and accompanying text.

60. *Management Council*, 953 P.2d at 844.

veto any portion of any bill making appropriations.<sup>61</sup>

#### ANALYSIS

The issue facing the Wyoming Supreme Court in *Management Council* is not unique to Wyoming.<sup>62</sup> However, its decision is somewhat unique in its impact on the Wyoming governor's power. The court's decision, although based upon sound constitutional interpretation, may have serious implications for the balance of power between Wyoming's governor and its legislature. Arguably, this decision could give Wyoming's governor too much power, while simultaneously depriving the legislature. Moreover, it may force the legislature to draft and possibly even manipulate appropriation legislation creatively in an effort to protect its side of the balance.

The general use of the line item veto is not without its advocates. Some argue that the line item veto is "an effective tool for reducing the level of expenditure caused by 'pork barrel' legislation and by the legislator's propensity for logrolling."<sup>63</sup> Moreover, the item veto gives the governor the flexibility "to change not only the level but the composition of state spending."<sup>64</sup> The item veto is a state effort to promote three basic principles: the rejection of legislative logrolling, the imposition of fiscal restrictions on the legislature, and the strengthening of the governor's role in budgetary matters.<sup>65</sup> Nonetheless, when the power given to the governor outweighs the power given to the legislature a precarious balance is disturbed. Arguably that balance has been disturbed in Wyoming.

The noted-importance of keeping the three branches of government separate is age-old. As James Madison wrote in *The Federalist* No. 47, "where the whole power of one department is exercised by the same hands which possess the whole power of another department, the fundamental principles of a free constitution are subverted."<sup>66</sup> Similarly, the State of Wyoming has long had a dedication to the separation of powers doctrine, dating back to the original Wyoming Constitution of 1890.<sup>67</sup> Despite this

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61. *Id.*

62. See *supra* notes 32-34 and accompanying text.

63. John Alm & Mark Evers, *The Item Veto and State Government Expenditures*, 68 PUB. CHOICE 1, 1 (1991). Log rolling is defined as the legislative practice of embracing in one bill several distinct matters, none of which, perhaps, could singly obtain the assent of the legislature, and then procuring its passage by a combination of the minorities in favor of each of the measures into a majority that will adopt them all. BLACK'S LAW DICTIONARY 942 (6th ed. 1990).

64. Alm & Evers, *supra* note 63, at 1.

65. Briffault, *supra* note 14, at 1177.

66. THE FEDERALIST NO. 47 (James Madison); see also Martin S. Flaherty, *The Most Dangerous Branch*, 105 YALE L.J. 1725, 1727 (1996).

67. State ex rel. Sullivan v. Schnitzer, 95 P. 698, 702 (Wyo. 1908).



fact, Wyoming also recognizes that the three branches of government are balanced, not separated into airtight compartments:<sup>68</sup> “our framers intended an integration of dispersed powers into a balanced workable government.”<sup>69</sup> The separation of powers doctrine in Wyoming was designed to be flexible and pragmatic.<sup>70</sup> It seems the court had this flexible view in mind when it decided the *Management Council* case.

The Wyoming Supreme Court used constitutional language, and not constitutional construction, when deciding the *Management Council* case.<sup>71</sup> Whether the court intended an extension of the gubernatorial power is unclear. The court clearly interpreted Wyoming Constitution Article 4, Section 9 as quite broad: “It follows that when the framers gave the governor the ‘power to disapprove of any item or items or part or parts of any bill making appropriations of money or property embracing distinct items’ in article 4, section 9, the framers contemplated giving the Governor broad veto authority.”<sup>72</sup> The court’s interpretation of that passage could be dramatic because of its separation of powers implications.

Other line item veto states can be used as a model for what may develop in Wyoming. Wisconsin gave its governor sweeping item veto authority when it adopted its Constitution in 1848.<sup>73</sup> The Wisconsin Supreme Court has interpreted the governor’s item veto power as enormous and quasi-legislative when dealing with appropriations bills.<sup>74</sup> The Wisconsin constitutional language is somewhat different from Wyoming’s, but the result is the same.<sup>75</sup> Moreover, it was the Wisconsin method that Governor Geringer urged the Wyoming Supreme Court to adopt in *Management Council*.<sup>76</sup> The only limit placed on the Wisconsin governor’s power is that “what remains after the veto must be a complete and workable law” and must be “germane” to the legislative bill passed.<sup>77</sup>

The Wyoming Supreme Court placed no such restriction on the Wyoming governor. The only qualification placed on the item veto essentially amounts to no qualification at all. The governor has “the power to disapprove of *any* item or items or part or parts of *any* bill making appropriations

68. *Billis v. State*, 800 P.2d 401, 414 (Wyo. 1990).

69. *Id.*

70. *Id.* at 415.

71. See *supra* notes 55-61 and accompanying text.

72. *Management Council of the Wyoming Legislature v. Geringer*, 953 P.2d 839, 842 (Wyo. 1998).

73. See Briffault, *supra* note 14, at 1194.

74. *Id.*

75. WIS. CONST. art. V, § 10 outlines that “[a]ppropriations 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.”

76. *Management Council*, 953 P.2d at 846.

77. Briffault, *supra* note 14, at 1195.

of money or property embracing distinct items.”<sup>78</sup> The word “any” was quite important to the court when deciding the extent of the governor’s line item veto power. The court cited the definition from Black’s Law Dictionary: “Any. Some; one out of many; an indefinite number. One indiscriminately of whatever kind or quality.”<sup>79</sup> According to the court’s interpretation, the only limitation on the governor’s line item veto power is that the item vetoed be somewhere within an appropriations bill.

The Wyoming governor could veto single words, parts of words, and possibly even single digits. Although extreme, the day could be envisioned where the governor could change an appropriation from \$750,000 to \$750 or a “shall not” to a “shall,” thus completely undercutting the intent of the legislature.

The Supreme Court of Wisconsin has allowed its governor to veto parts of appropriations bills “as small as single digits and individual letters.”<sup>80</sup> In *State ex rel. Sandby v. Adamay*, the governor creatively altered portions of a bill and changed an optional referendum process to a mandatory local referendum.<sup>81</sup> The governor did so by using “artful deletions;”<sup>82</sup> he carefully struck certain words and phrases throughout the bill and changed legislative policy completely.<sup>83</sup> Likewise, in *State ex rel. Kleczka v. Conta*, the governor changed an “add-on” on the state income tax return to a “check-off” that allocated tax money to a state campaign fund.<sup>84</sup> The change created the difference between a taxpayer electing to donate and a taxpayer being required to affirmatively decline to donate. Lastly, in *State ex rel. Wisconsin Senate v. Thompson*, the Wisconsin Supreme Court upheld the governor’s veto authority on word fragments, individual letters from words, and individual digits from numbers.<sup>85</sup> It was in the *Thompson* decision that the court placed

78. WYO. CONST. art IV, § 9 (emphasis added).

79. *Management Council*, 953 P. 2d at 845 (citing BLACK’S LAW DICTIONARY 94 (6th ed. 1990)).

80. Mary E. Burke, Comment, *The Wisconsin Partial Veto: Past, Present and Future*, 1989 Wis. L. Rev. 1395, 1395.

81. 237 N.W.2d 910, 918 (Wis. 1976).

82. Briffault, *supra* note 14, at 1195.

83. *Id.*

84. 264 N.W.2d 539, 541 (Wis. 1978).

85. 424 N.W.2d 385 (Wis. 1988). As one commentator has noted:

The number and variety of Governor Thompson’s 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. 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. Governor Thompson vetoed the term ‘48 hours’ and creatively substituted ‘ten days’ by vetoing individual letters and works from another sentence in that section. The governor also vetoed single digits from appropriation amounts; the state Arts Board’s appropriation was reduced

the restriction that “what remains after the veto must be a complete and workable law” which is “germane” to the original bill passed by the legislature.<sup>86</sup> One commentator notes that the

Wisconsin approach goes far toward converting the veto authority into a broad affirmative law-making power. Indeed the only limits on the Wisconsin governor’s powers to craft new laws are the configuration of letters and digits on the pages of the legislature’s appropriations bills and the governor’s own power of imagination. The Wisconsin approach concentrates too much power in one branch of government.<sup>87</sup>

Arguably, the Wyoming Supreme Court’s interpretation of the line item veto could lead to the same result. Whether the above vetoes would be upheld in Wyoming is still an unanswered question because the court did not address this separation of powers issue.

In addition, the broad line item veto power constitutionally granted to the governor may force the legislature to craft legislation artfully to avoid the governor’s item veto pen. Tipping the separation of power scale in favor of the governor forces the legislature

[to] think closely about the relationship of the parts of a bill to each other and to the bill as a whole; to consider the degree to which the executive’s power to unravel legislative packages conflicts with [the] customary notions of legislative intent and the way in which legislatures reach agreement; and to address the meaning of appropriation at a time when state finances are seriously affected by measures that do not fall within the traditional definition of appropriation.<sup>88</sup>

The legislature may need to keep the legislative intent and purpose completely separate from the actual dollar appropriation. Appropriations bills may turn into just that, with very little directional language to guide executive branch agencies and citizens on how money is to be spent. Such creative drafting will help swing the balance back to the legislature; however, the creative drafting by the legislature may also thwart the use of the line item veto by governors, overcompensating and tilting the balance too far back toward the legislative branch. Just as the effectiveness of the gen-

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from \$750,000 to \$75,000 by vetoing a “0.”  
Burke, *supra* note 80, at 1395-96.

86. See Burke, *supra*, note 80, at 1417.

87. Briffault, *supra* note 14, at 1195.

88. Briffault, *supra* note 14, at 1203-04.

eral veto has been thwarted by legislative manipulation, so also has the purpose of the item veto been at least partially undermined. For instance, legislatures can combine items desired by governors with those opposed by them into one item.<sup>89</sup>

The practical effects of a diminished legislative power are already being noted. Wyoming reporter Joan Barron commented on the legislature's stature in her weekly column, editorializing on the legislature's need for a boost.<sup>90</sup> This frequent observer of the legislature believes the lawmakers suffer from a loss of stature and blames that loss in part on the *Management Council* lawsuit:

The Legislature as an institution isn't in great shape. A series of blows has contributed to the weakened stature of the House and Senate. The Legislature lost its lawsuit over Gov. Jim Geringer's line item veto authority in an unprecedented legal confrontation between the legislative and executive branches of government.<sup>91</sup>

The stature and power of the legislature have been diminished by the *Management Council* decision; only the future will tell if the damage is repairable.<sup>92</sup>

#### CONCLUSION

The Wyoming Supreme Court used sound interpretation supported by the plain and unambiguous language of the Wyoming Constitution when it upheld the Governor's vetoes in HEA 2. Nonetheless, its decision may have greater impacts in the State of Wyoming than are apparent at first blush. A fundamental American belief in the separation of powers between the branches of government could be in jeopardy in Wyoming. The limits of Wyoming's line item veto will not be realized until the next controversial gubernatorial item veto and its subsequent challenge by the legislature.

The Wyoming Supreme Court will undoubtedly face the separation of power issue again in the near future and be forced to address it, which it did

89. Abney & Lauth, *supra* note 36, at 373.

90. Joan Barron, *Legislature Needs Bolstering as an Institution*, CASPER STAR-TRIBUNE, Sept. 27, 1998, at E1.

91. *Id.*

92. The legislature has taken some steps to repair its alleged tattered image. In an additional commentary, Joan Barron noted that Senate President Jim Twiford is attempting to regain stature by tightening protocol and the legislative dress code. He proposed the ban of jeans and tennis shoes in the Senate. He was quoted as saying, "I know that we're interested in regaining powers delegated to the Legislature. To do that you need to take all these little pieces." Joan Barron, *Does Spiffy Dress Make the Legislator?* CASPER STAR-TRIBUNE, Nov. 29, 1998, at E1.

not do in *Management Council*. Until that time, the governor of Wyoming has free rein to veto any portion of any appropriations bill that he sees fit, thus throwing the delicate balance of power between the executive and legislative branches out of stasis.

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