SUPREME COURT OF THE UNITED STATES

No. 97–1374

WILLIAM J. CLINTON, PRESIDENT OF THE UNITED STATES, ET AL., APPELLANTS *v.* CITY OF NEW YORK ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[June 25, 1998]

JUSTICE SCALIA, with whom JUSTICE O'CONNOR joins, and with whom JUSTICE BREYER joins as to Part III, concurring in part and dissenting in part.

Today the Court acknowledges the "'overriding and time-honored concern about keeping the Judiciary's power within its proper constitutional sphere,'" *ante*, at 1–2, quoting *Raines* v. *Byrd*, 521 U. S. ___, ___ (1997) (slip op., at 8). It proceeds, however, to ignore the prescribed statutory limits of our jurisdiction by permitting the expedited-review provisions of the Line Item Veto Act to be invoked by persons who are not "individual[s]," 2 U. S. C. §692 (1994 ed., Supp. II); and to ignore the constitutional limits of our jurisdiction by permitting one party to challenge the Government's denial *to another party* of favorable tax treatment from which the first party might, but just as likely might not, gain a concrete benefit. In my view, the Snake River appellees lack standing to challenge the President's cancellation of the "limited tax benefit," and the constitutionality of that action should not be addressed. I think the New York appellees have standing to challenge the President's cancellation of an "item of new direct spending"; I believe we have statutory authority (other than the expedited-review provision) to address that challenge; but unlike the Court I

find the President's cancellation of spending items to be entirely in accord with the Constitution.

I

The Court's unrestrained zeal to reach the merits of this case is evident in its disregard of the statute's expedited-review provision, which extends that special procedure to "[a]ny Member of Congress or any individual adversely affected by [the Act]," §692. With the exception of Mike Cranney, a natural person, the appellees– corporations, cooperatives, and governmental entities– are not "individuals" under any accepted usage of that term. Worse still, the first provision of the United States Code confirms that insofar as this word is concerned, Congress speaks English like the rest of us: "In determining the meaning of any Act of Congress, unless the context indicates otherwise . . . the wor[d] 'person' . . . include[s] corporations, companies, associations, firms, partnerships, societies, and joint stock companies, *as well as individuals.*" 1 U. S. C. §1 (emphasis added). And doubly worse, one of the definitional provisions of this very Act expressly distinguishes "individuals" from "persons." A tax law does not create a "limited tax benefit," it says, so long as

> "any difference in the treatment of *persons* is based solely on–
>
> "(I) in the case of *businesses and associations*, the size or form of the business or association involved;
>
> "(II) in the case of *individuals*, general demographic conditions, such as income, marital status, number of dependents, or tax return filing status . . . ." 2 U. S. C. §691e(9)(B)(iii) (1994 ed., Supp. II) (emphasis added).

The Court majestically sweeps the plain language of the statute aside, declaring that "[t]here is no plausible reason why Congress would have intended to provide for such special treatment of actions filed by natural persons and

to have precluded entirely jurisdiction over comparable cases brought by corporate persons." *Ante*, at 10. Indeed, the Court says, it would be "absurd" for Congress to have done so. *Ibid.* But Congress treats individuals more favorably than corporations and other associations *all the time.* There is nothing whatever extraordinary– and surely nothing so bizarre as to permit this Court to declare a "scrivener's error"– in believing that individuals will suffer more seriously from delay in the receipt of "vetoed" benefits or tax savings than corporations will, and therefore according individuals (but not corporations) expedited review. It may be unlikely that this is what Congress actually had in mind; but it is what Congress said, it is not so absurd as to be an obvious mistake, and it is therefore the law.

The only individual who has sued, and thus the only appellee who qualifies for expedited review under §692, is Mike Cranney. Since §692 does not confer jurisdiction over the claims of the other appellees, we must dismiss them, unless we have jurisdiction under another statute. In their complaints, appellees sought declaratory relief not only under §692(a), but also under the Declaratory Judgment Act, 28 U. S. C. §2201, invoking the District Court's jurisdiction under 28 U. S. C. §1331. After the District Court ruled, the Government appealed directly to this Court, but it also filed a notice of appeal to the Court of Appeals for the District of Columbia. In light of the Government's representation that it desires "[t]o eliminate any possibility that the district court's decision might escape review," Reply Brief for Appellants 2, n. 1, I would deem its appeal to this Court a petition for writ of certiorari before judgment, see 28 U. S. C. §2101(e), and grant it. Under this Court's Rule 11, "[a] petition for a writ of certiorari to review a case pending in a United States court of appeals, before judgment is entered in that court, will be granted only upon a showing that the case is of

such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court." In light of the public importance of the issues involved, and the little sense it would make for the Government to pursue its appeal against one appellee in this Court and against the others in the Court of Appeals, the entire case, in my view, qualifies for certiorari review before judgment.

II

Not only must we be satisfied that we have statutory jurisdiction to hear this case; we must be satisfied that we have jurisdiction under Article III. "To meet the standing requirements of Article III, '[a] plaintiff must allege *personal injury* fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief.'" *Raines*, 521 U. S., at ___ (slip op., at 6), quoting *Allen* v. *Wright,* 468 U. S. 737, 751 (1984).

In the first action before us, appellees Snake River Potato Growers, Inc. (Snake River) and Mike Cranney, Snake River's Director and Vice-Chairman, challenge the constitutionality of the President's cancellation of §968 of the Taxpayer Relief Act of 1997. The Snake River appellees have standing, in the Court's view, because §968 gave them "the equivalent of a statutory 'bargaining chip,'" and "[b]y depriving them of their statutory bargaining chip, the cancellation inflicted a sufficient likelihood of economic injury to establish standing under our precedents." *Ante*, at 13, 14. It is unclear whether the Court means that deprivation of a "bargaining chip" itself suffices for standing, or that such deprivation suffices in the present case because it creates a likelihood of economic injury. The former is wrong as a matter of law, and the latter is wrong as a matter of fact, on the facts alleged.

For the proposition that "a denial of a benefit in the bargaining process" can suffice for standing the Court

relies in a footnote, see *ante*, at 15, n. 22, on *Northeastern Fla. Chapter, Associated Gen. Contractors of America* v. *Jacksonville,* 508 U. S. 656 (1993). There, an association of contractors alleged that a city ordinance according racial preferences in the award of city contracts denied its members equal protection of the laws. *Id.,* at 658–659. The association's members had regularly bid on and performed city contracts, and would have bid on designated set-aside contracts but for the ordinance. *Id.,* at 659. We held that the association had standing even without proof that its members would have been awarded contracts absent the challenged discrimination. The reason, we explained, is that "[t]he 'injury in fact' in an equal protection case of this variety is the denial of equal treatment resulting from the imposition of the barrier, not the ultimate inability to obtain the benefit." *Id.,* at 666, citing two earlier equal protection cases, *Turner* v. *Fouche,* 396 U. S. 346, 362 (1970), and *Richmond* v. *J. A. Croson Co.,* 488 U. S. 469, 493 (1989). In other words, *Northeastern Florida* did not hold, as the Court suggests, that harm to one's bargaining position is an "injury in fact," but rather that, in an equal protection case, the denial of equal treatment is. Inasmuch as Snake River does not challenge the Line Item Veto Act on equal-protection grounds, *Northeastern Florida* is inapposite. And I know of no case outside the equal-protection field in which the mere detriment to one's "bargaining position," as opposed to a demonstrated loss of some bargain, has been held to confer standing. The proposition that standing is established by the mere reduction in one's chances of receiving a financial benefit is contradicted by *Simon* v. *Eastern Ky. Welfare Rights Organization,* 426 U. S. 26 (1976), which held that low-income persons who had been denied treatment at local hospitals lacked standing to challenge an Internal Revenue Service (IRS) ruling that reduced the amount of charitable care necessary for the hospitals to qualify for tax-

exempt status. The situation in that case was strikingly similar to the one before us here: the denial of a tax benefit to a third party was alleged to reduce the chances of a financial benefit to the plaintiffs. And standing was denied.

But even if harm to one's bargaining position *were* a legally cognizable injury, Snake River has not alleged, as it must, facts sufficient to demonstrate that *it personally* has suffered that injury. See *Warth* v. *Seldin,* 422 U. S. 490, 502 (1975). In *Eastern Ky. Welfare Rights*, *supra*, the plaintiffs at least had *applied* for the financial benefit which had allegedly been rendered less likely of receipt; the present suit, by contrast, resembles a complaint asserting that the plaintiff's chances of winning the lottery were reduced, filed by a plaintiff who never bought a lottery ticket, or who tore it up before the winner was announced. Snake River has presented no evidence to show that it was engaged in bargaining, and that that bargaining was impaired by the President's cancellation of §968. The Court says that Snake River "was engaged in ongoing negotiations with the owner of a processing plant who had expressed an interest in structuring a tax-deferred sale when the President canceled §968," *ante*, at 13. There is, however, no evidence of "negotiations," only of two "discussions." According to the affidavit of Mike Cranney:

> "On or about May 1997, I spoke with Howard Phillips, the principal owner of Idaho Potato Packers, concerning the possibility that, if the Cooperative Tax Act were passed, Snake River Potato Growers might purchase a Blackfoot, Idaho processing facility in a transaction that would allow the deferral of gain. Mr. Phillips expressed an interest in such a transaction if the Cooperative Tax Act were to pass. Mr. Phillips also acknowledged to me that Jim Chapman, our General Manager, had engaged him in a previous discussion concerning this matter." App. 112.

This affidavit would have set forth something of significance if it had said that Phillips had expressed an interest in the transaction "if *and only if* the Cooperative Tax Act were to pass." But of course it is most unlikely he said that; Idaho Potato Packers (IPP) could get just as much from the sale without the Act as with the Act, so long as the price was right. The affidavit would also have set forth something of significance if it had said that Phillips had expressed an interest in the sale "at a particular price if the Cooperative Tax Act were to pass." But it does not say that either. Nor does it even say that the President's action caused IPP to reconsider. Moreover, it was Snake River, not IPP, that terminated the discussions. According to Cranney, "[t]he President's cancellation of the Cooperative Tax Act caused me to terminate discussions with Phillips about the possibility of Snake River Potato Growers buying the Idaho Potato Packers facility," App. 114. So all we know from the record is that Snake River had two discussions with IPP concerning the sale of its processing facility on the tax deferred basis the Act would allow; that IPP was interested; and that Snake River ended the discussions after the President's action. We do not know that Snake River was prepared to offer a price– tax deferral or no– that would cross IPP's laugh threshold. We do not even know for certain that the tax deferral was a significant attraction to IPP; we know only that Cranney thought it was. On these facts– which never even bring things to the *point* of bargaining– it is pure conjecture to say that Snake River suffered an impaired bargaining position. As we have said many times, conjectural or hypothetical injuries do not suffice for Article III standing. See *Lujan* v. *Defenders of Wildlife,* 504 U. S. 555, 560 (1992).

Nor has Snake River demonstrated, as the Court finds, that "the cancellation inflicted a sufficient likelihood of

economic injury to establish standing under our precedents." *Ante*, at 14. Presumably the economic injury the Court has in mind is Snake River's loss of a bargain purchase of a processing plant. But there is no evidence, and indeed not even an allegation, that before the President's action such a purchase was *likely*. The most that Snake River alleges is that the President's action rendered it "more difficult for plaintiffs to purchase qualified processors," App. 12. And even if that abstract "increased difficulty" sufficed for injury-in-fact (which it does not), the existence of *even that* is pure speculation. For all that appears, *no* owner of a processing plant would have been willing to sell to Snake River at *any* price that Snake River could afford– and the impossible cannot be made "more difficult." All we know is that a potential seller was "interested" in talking about the subject before the President's action, and that after the President's action Snake River itself decided to proceed no further. If this establishes a "likelihood" that Snake River would have made a bargain purchase but for the President's action, or even a "likelihood" that the President's action rendered "more difficult" a purchase that was realistically within Snake River's grasp, then we must adopt for our standing jurisprudence a new definition of likely: "plausible."

Twice before have we addressed whether plaintiffs had standing to challenge the Government's tax treatment of a third party, and twice before have we held that the speculative nature of a third party's response to changes in federal tax laws defeats standing. In *Eastern Ky. Welfare Rights,* 426 U. S. 26 (1976), we found it "purely speculative whether the denials of service . . . fairly can be traced to [the IRS's] 'encouragement' or instead result from decisions made by the hospitals without regard to the tax implications." *Id.,* at 42–43. We found it "equally speculative whether the desired exercise of the court's remedial powers in this suit would result in the availabil-

ity to respondents of such services." *Id.,* at 43. In *Allen* v. *Wright,* 468 U. S. 737 (1984), we held that parents of black children attending public schools lacked standing to challenge IRS policies concerning tax exemptions for private schools. The parents alleged, *inter alia*, that "federal tax exemptions to racially discriminatory private schools in their communities impair their ability to have their public schools desegregated." *Id.,* at 752–753. We concluded that "the injury alleged is not fairly traceable to the Government conduct . . . challenge[d] as unlawful," *id.,* at 757, and that "it is entirely speculative . . . whether withdrawal of a tax exemption from any particular school would lead the school to change its policies." *Id.,* at 758. Likewise, here, it is purely speculative whether a tax-deferral would have prompted any sale, let alone one that reflected the tax benefit in the sale price.

The closest case the Court can appeal to as precedent for its finding of standing is *Bryant* v. *Yellen,* 447 U. S. 352 (1980). Even on its own terms, *Bryant* is distinguishable. As that case came to us, it involved a dispute between a class of some 800 landowners in the Imperial Valley, each of whom owned more than 160 acres, and a group of Imperial Valley residents who wished to purchase lands owned by that class. The point at issue was the application to those lands of a statutory provision that forbade delivery of water from a federal reclamation project to irrigable land held by a single owner in excess of 160 acres, and that limited the sale price of any lands so held in excess of 160 acres to a maximum amount, fixed the Secretary of the Interior, based on fair market value in 1929, before the Valley was irrigated by water from the Boulder Canyon Project. *Id.,* at 366–367. That price would of course be "far below [the lands'] current market values," *id.*, at 367, n. 17. The Court concluded that the would-be purchasers "had a sufficient stake in the outcome of the controversy to afford them standing," *id.,* at 368. It is true, as the Court

today emphasizes, that the purchasers had not presented "detailed information about [their] financial resources," but the Court thought that unnecessary only because "purchasers of such land would stand to reap significant gains on resale." *Id.*, at 367, n. 17. Financing, in other words, would be easy to come by. Here, by contrast, not only do we have no notion whether Snake River has the cash in hand to afford IPP's bottom-line price, but we also have no reason to believe that financing of the purchase will be readily available. Potato processing plants, unlike agricultural land in the Imperial Valley, do not have a readily available resale market. On the other side of the equation, it was also much clearer in *Bryant* that if the suit came out in the would-be purchasers' favor, many of the landowners would be willing to sell. The alternative would be withdrawing the land from agricultural production, whereas sale– even at bargain-basement prices for the land– would at least enable recoupment of the cost of improvements, such as drainage systems. *Ibid.* In the present case, by contrast, we have no reason to believe that IPP is not operating its processing plant at a profit, and will not continue to do so in the future; Snake River has proffered no evidence that IPP or any other processor *would surely have sold* if only the President had not cancelled the tax deferral. The only uncertainty in *Bryant* was whether any of the respondents would wind up as buyers of any of the excess land; that seemed probable enough, since "respondents are residents of the Imperial Valley who desire to purchase the excess land for purposes of farming." *Ibid.* We have no basis to say that it is "likely" that Snake River would have purchased a processing facility if §968 had not been cancelled.

More fundamentally, however, the reasoning of *Bryant* should not govern the present case because it represents a crabbed view of the standing doctrine that has been superseded. *Bryant* was decided at the tail-end of "an era in

which it was thought that the only function of the constitutional requirement of standing was 'to assure that concrete adverseness which sharpens the presentation of issues,'" *Spencer* v. *Kemna*, 523 U. S. ___, ___ (1998) (slip op., at 9), quoting *Baker* v. *Carr,* 369 U. S. 186, 204 (1962). Thus, the *Bryant* Court ultimately afforded the respondents standing simply because they "had a sufficient stake in the outcome of the controversy," 447 U. S., at 368, not because they had demonstrated injury in fact, causation and redressability. "That parsimonious view of the function of Article III standing has since yielded to the acknowledgement that the constitutional requirement is a 'means of "defin[ing] the role assigned to the judiciary in a tripartite allocation of power,"' and 'a part of the basic charter . . . provid[ing] for the interaction between [the federal] government and the governments of the several States,'" *Spencer*, *supra,* at ___ (slip op., at 10), quoting *Valley Forge Christian College* v. *Americans United for Separation of Church and State, Inc.,* 454 U. S. 464, 474, 476 (1982). While Snake River in the present case may indeed have enough of a "stake" to assure adverseness, the matter it brings before us is inappropriate for our resolution because its allegations do not establish an injury in fact, attributable to the Presidential action it challenges, and remediable by this Court's invalidation of that Presidential action.

Because, in my view, Snake River has no standing to bring this suit, we have no jurisdiction to resolve its challenge to the President's authority to cancel a "limited tax benefit."

III

I agree with the Court that the New York appellees have standing to challenge the President's cancellation of §4722(c) of the Balanced Budget Act of 1997 as an "item of new direct spending." See *ante*, at 11–12. The tax liabil-

ity they will incur under New York law is a concrete and particularized injury, fairly traceable to the President's action, and avoided if that action is undone. Unlike the Court, however, I do not believe that Executive cancellation of this item of direct spending violates the Presentment Clause.

The Presentment Clause requires, in relevant part, that "[e]very 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 approve he shall sign it, but if not he shall return it," U. S. Const., Art. I, §7, cl. 2. There is no question that enactment of the Balanced Budget Act complied with these requirements: the House and Senate passed the bill, and the President signed it into law. It was only *after* the requirements of the Presentment Clause had been satisfied that the President exercised his authority under the Line Item Veto Act to cancel the spending item. Thus, the Court's problem with the Act is not that it authorizes the President to veto parts of a bill and sign others into law, but rather that it authorizes him to "cancel"– prevent from "having legal force or effect"– certain parts of duly enacted statutes.

Article I, §7 of the Constitution obviously prevents the President from cancelling a law that Congress has not authorized him to cancel. Such action cannot possibly be considered part of his execution of the law, and if it is legislative action, as the Court observes, " 'repeal of statutes, no less than enactment, must conform with Art. I.' " *Ante*, at 19, quoting from *INS* v. *Chadha*, 462 U. S. 919, 954 (1983). But that is not this case. It was certainly arguable, as an original matter, that Art. I, §7 also prevents the President from cancelling a law which itself *authorizes* the President to cancel it. But as the Court acknowledges, that argument has long since been made and rejected. In 1809, Congress passed a law authorizing the President to

cancel trade restrictions against Great Britain and France if either revoked edicts directed at the United States. Act of Mar. 1, 1809, §11, 2 Stat. 528. Joseph Story regarded the conferral of that authority as entirely unremarkable in *The Orono*, 18 F. Cas. 830 (No. 10,585) (CCD Mass. 1812). The Tariff Act of 1890 authorized the President to "suspend, by proclamation to that effect" certain of its provisions if he determined that other countries were imposing "reciprocally unequal and unreasonable" duties. Act of Oct. 1, 1890, §3, 26 Stat. 612. This Court upheld the constitutionality of that Act in *Field* v. *Clark,* 143 U. S. 649 (1892), reciting the history since 1798 of statutes conferring upon the President the power to, *inter alia*, "discontinue the prohibitions and restraints hereby enacted and declared," *id.,* at 684, "suspend the operation of the aforesaid act," *id.,* at 685, and "declare the provisions of this act to be inoperative," *id.,* at 688.

As much as the Court goes on about Art. I, §7, therefore, that provision does not demand the result the Court reaches. It no more categorically prohibits the Executive *reduction* of congressional dispositions in the course of implementing statutes that authorize such reduction, than it categorically prohibits the Executive *augmentation* of congressional dispositions in the course of implementing statutes that authorize such augmentation– generally known as substantive rulemaking. There are, to be sure, limits upon the former just as there are limits upon the latter– and I am prepared to acknowledge that the limits upon the former may be much more severe. Those limits are established, however, not by some categorical prohibition of Art. I, §7, which our cases conclusively disprove, but by what has come to be known as the doctrine of unconstitutional delegation of legislative authority: When authorized Executive reduction or augmentation is allowed to go too far, it usurps the nondelegable function of Congress and violates the separation of powers.

It is this doctrine, and not the Presentment Clause, that was discussed in the *Field* opinion, and it is this doctrine, and not the Presentment Clause, that is the issue presented by the statute before us here. That is why the Court is correct to distinguish prior authorizations of Executive cancellation, such as the one involved in *Field*, on the ground that they were contingent upon an Executive finding of fact, and on the ground that they related to the field of foreign affairs, an area where the President has a special "degree of discretion and freedom," *ante*, at 27 (citation omitted). These distinctions have nothing to do with whether the details of Art. I, §7 have been complied with, but everything to do with whether the authorizations went too far by transferring to the Executive a degree of political, law-making power that our traditions demand be retained by the Legislative Branch.

I turn, then, to the crux of the matter: whether Congress's authorizing the President to cancel an item of spending gives him a power that our history and traditions show must reside exclusively in the Legislative Branch. I may note, to begin with, that the Line Item Veto Act is not the first statute to authorize the President to "cancel" spending items. In *Bowsher* v. *Synar,* 478 U. S. 714 (1986), we addressed the constitutionality of the Balanced Budget and Emergency Deficit Control Act of 1985, 2 U. S. C. §901 *et seq.* (1982 ed., Supp. III), which required the President, if the federal budget deficit exceeded a certain amount, to issue a "sequestration" order mandating spending reductions specified by the Comptroller General. §902. The effect of sequestration was that "amounts sequestered . . . shall be *permanently cancelled,*" §902(a)(4) (emphasis added). We held that the Act was unconstitutional, not because it impermissibly gave the Executive legislative power, but because it gave the Comptroller General, an officer of the Legislative Branch over whom Congress retained removal power, "the ultimate authority

to determine the budget cuts to be made," 478 U. S., at 733, "functions . . . *plainly entailing execution of the law in constitutional terms.*" *Id.,* at 732–733 (emphasis added). The President's discretion under the Line Item Veto Act is certainly broader than the Comptroller General's discretion was under the 1985 Act, but it is no broader than the discretion traditionally granted the President in his execution of spending laws.

Insofar as the degree of political, "law-making" power conferred upon the Executive is concerned, there is not a dime's worth of difference between Congress's authorizing the President to *cancel* a spending item, and Congress's authorizing money to be spent on a particular item at the President's discretion. And the latter has been done since the Founding of the Nation. From 1789–1791, the First Congress made lump-sum appropriations for the entire Government– "sum[s] not exceeding" specified amounts for broad purposes. Act of Sept. 29, 1789, ch. 23, §1, 1 Stat. 95; Act of Mar. 26, 1790, ch. 4, §1, 1 Stat. 104; Act of Feb. 11, 1791, ch. 6, 1 Stat. 190. From a very early date Congress also made permissive individual appropriations, leaving the decision whether to spend the money to the President's unfettered discretion. In 1803, it appropriated $50,000 for the President to build "not exceeding fifteen gun boats, to be armed, manned and fitted out, and employed for such purposes as in his opinion the public service may require," Act of Feb. 28, 1803, ch. 11, §3, 2 Stat. 206. President Jefferson reported that "[t]he sum of fifty thousand dollars appropriated by Congress for providing gun boats remains unexpended. The favorable and peaceable turn of affairs on the Mississippi rendered an immediate execution of that law unnecessary," 13 Annals of Cong. 14 (1803). Examples of appropriations committed to the discretion of the President abound in our history. During the Civil War, an Act appropriated over $76 million to be divided among various items "as the exigencies

of the service may require," Act of Feb. 25, 1862, ch. 32, 12 Stat. 344–345. During the Great Depression, Congress appropriated $950 million "for such projects and/or purposes and under such rules and regulations as the President in his discretion may prescribe," Act of Feb. 15, 1934, ch. 13, 48 Stat. 351, and $4 billion for general classes of projects, the money to be spent "in the discretion and under the direction of the President," Emergency Relief Appropriation Act of 1935, 49 Stat. 115. The constitutionality of such appropriations has never seriously been questioned. Rather, "[t]hat Congress has wide discretion in the matter of prescribing details of expenditures for which it appropriates must, of course, be plain. Appropriations and other acts of Congress are replete with instances of general appropriations of large amounts, to be allotted and expended as directed by designated government agencies." *Cincinnati Soap Co.* v. *United States,* 301 U. S. 308, 321–322 (1937).

Certain Presidents have claimed Executive authority to withhold appropriated funds even *absent* an express conferral of discretion to do so. In 1876, for example, President Grant reported to Congress that he would not spend money appropriated for certain harbor and river improvements, see Act of Aug. 14, 1876, ch. 267, 19 Stat. 132, because "[u]nder no circumstances [would he] allow expenditures upon works not clearly national," and in his view, the appropriations were for "works of purely private or local interest, in no sense national," 4 Cong. Rec. 5628. President Franklin D. Roosevelt impounded funds appropriated for a flood control reservoir and levee in Oklahoma. See Act of Aug. 18, 1941, ch. 377, 55 Stat. 638, 645; Hearings on S. 373 before the Ad Hoc Subcommittee on Impoundment of Funds of the Committee on Government Operations and the Subcommittee on Separation of Powers of the Senate Committee on the Judiciary, 93d Cong., 1st Sess., 848–849 (1973). President Truman ordered the

impoundment of hundreds of millions of dollars that had been appropriated for military aircraft. See Act of Oct. 29, 1949, ch. 787, 63 Stat. 987, 1013; Public Papers of the Presidents of the United States, Harry S. Truman, 1949, pp. 538–539 (W. Reid ed. 1964). President Nixon, the Mahatma Ghandi of all impounders, asserted at a press conference in 1973 that his "constitutional right" to impound appropriated funds was "absolutely clear." The President's News Conference of Jan. 31, 1973, 9 Weekly Comp. of Pres. Doc. 109–110 (1973). Our decision two years later in *Train* v. *City of New York,* 420 U. S. 35 (1975), proved him wrong, but it implicitly confirmed that Congress may confer discretion upon the executive to withhold appropriated funds, even funds appropriated for a specific purpose. The statute at issue in *Train* authorized spending "not to exceed" specified sums for certain projects, and directed that such "[s]ums authorized to be appropriated . . . shall be allotted" by the Administrator of the Environmental Protection Agency, 33 U. S. C. §§1285, 1287 (1970 ed., Supp. III). Upon enactment of this statute, the President directed the Administrator to allot no more than a certain part of the amount authorized. 420 U. S., at 40. This Court held, as a matter of statutory interpretation, that the statute *did not grant* the Executive discretion to withhold the funds, but required allotment of the full amount authorized. *Id.,* at 44–47.

The short of the matter is this: Had the Line Item Veto Act authorized the President to "decline to spend" any item of spending contained in the Balanced Budget Act of 1997, there is not the slightest doubt that authorization would have been constitutional. What the Line Item Veto Act does instead– authorizing the President to "cancel" an item of spending– is technically different. But the technical difference does *not* relate to the technicalities of the Presentment Clause, which have been fully complied with; and the doctrine of unconstitutional delegation, which *is*

at issue here, is preeminently *not* a doctrine of technicalities. The title of the Line Item Veto Act, which was perhaps designed to simplify for public comprehension, or perhaps merely to comply with the terms of a campaign pledge, has succeeded in faking out the Supreme Court. The President's action it authorizes in fact is not a line-item veto and thus does not offend Art. I, §7; and insofar as the substance of that action is concerned, it is no different from what Congress has permitted the President to do since the formation of the Union.

IV

I would hold that the President's cancellation of §4722(c) of the Balanced Budget Act as an item of direct spending does not violate the Constitution. Because I find no party before us who has standing to challenge the President's cancellation of §968 of the Taxpayer Relief Act, I do not reach the question whether that violates the Constitution.

For the foregoing reasons, I respectfully dissent.