The Wisconsin Governor's Partial Veto

after *Bartlett v. Evers*

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Preface

On July 10, 2020, the Wisconsin Supreme Court, in *Bartlett v. Evers,* held that three partial vetoes made by Governor Tony Evers in 2019 Wisconsin Act 9, the 2019–21 biennial budget bill, were unconstitutional.[1] Viewed from one perspective, *Bartlett* upends 85 years of relatively settled Supreme Court jurisprudence on the meaning and application of the governor's partial veto power. Viewed from a different perspective, this decision, although groundbreaking, continues a trend that began in the late 1980s and early 1990s to curtail the governor's partial veto power through amendments to the constitution and litigation. *Bartlett* is significant, as it potentially reconfigures the entire field of partial veto jurisprudence. But unlike most judicial decisions that fundamentally alter law, there is no rationale for the decision that has the support of a majority of justices.

This paper updates our 2019 publication on the governor's partial veto power in light of *Bartlett v. Evers*, as well as brings up to date several tables in our publication relating to the frequency of partial vetoes and legislative efforts to amend the partial veto power.[2] Readers who have a good understanding of the historical origins of the partial veto and evolution of court decisions on the partial veto are encouraged to go directly to our discussion of *Bartlett*, which begins on page 15.

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1. Bartlett v. Evers, 2020 WI 68.

2. Richard A. Champagne, Staci Duros, and Madeline Kasper, "The Wisconsin Governor's Partial Veto," *Reading the Constitution* 4, no. 1, (Madison, WI: Legislative Reference Bureau, June 2019).

Introduction

The Wisconsin governor has the power to partially veto appropriation bills, a power that is unique across all states. Most state constitutions grant the governor "item veto" power over appropriation bills, allowing the governor to strike or reduce appropriations.[3] The partial veto power has allowed the governor to strike words, numbers, and punctuation in both appropriation and non-appropriation text, thus giving the governor a role in the law-making process in a far more substantial way than simply having veto power over an entire bill. Armed with the partial veto, during the 1930–2020 period, the governor altered text and numbers in bills to create laws that not only may have been unintended by the legislature, but also that the legislature deliberately rejected. It is no wonder that U.S. Circuit Judge Richard Posner described Wisconsin's partial veto as "unusual, even quirky."[4]

A 1930 amendment to the Wisconsin Constitution created the governor's partial veto power. The amendment provided that "Appropriation bills may be approved in whole or in part by the governor, and the part approved shall become law."[5] This language remained unchanged for 60 years. In 1990, the voters amended the constitution to provide that "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."[6] This amendment prohibited the governor from striking letters in a bill to create an entirely new word, a practice started by Governor Anthony Earl and continued by Governor Tommy Thompson. In 2008, the voters again amended the constitution to prohibit the governor from creating "a new sentence by combining parts of 2 or more sentences of the enrolled bill."[7] The governor could still veto an entire sentence, or parts within a sentence, but could no longer create an entirely new sentence from parts of two or more sentences.

For the first 40 years after the creation of the governor's partial veto power, the partial veto was rarely used. Aside from the 1931 and 1933 biennial budget bills, in which there were 12 partial vetoes, subsequent governors either did not partially veto any provisions or partially vetoed only one or two provisions in budget bills until the 1969 legislative session. In that session, Governor Warren Knowles partially vetoed 27 provisions in the 1969 biennial budget bill. From that time on, the partial veto became a powerful tool for governors to alter and rewrite appropriation bills, reaching a high of 457 partial vetoes by Governor Thompson in the 1991 biennial budget bill.

This paper looks at the origins and history of the 1930 constitutional amendment,

3. Forty-four states have some form of item veto. Wisconsin has the partial veto. The only states that do not give the governor item veto power are Indiana, Nevada, North Carolina, Rhode Island, and Vermont. See the *2018 Book of the States*, http://knowledgecenter.csg.org.

4. Risser v. Thompson, 930 F.2d 549, 554 (1991).

5. Wis. Const. art. V, § 10 (November 1930).

6. Wis. Const. art. V, § 10 (1) (c) (April 1990).

7. Wis. Const. art. V, § 10 (1) (c) (April 2008).

discusses changes to the partial veto power in 1990 and 2008, examines judicial interpretation of the governor's partial veto power, summarizes the different kinds of partial vetoes, presents tests for when and how the governor may exercise the partial veto power, and documents the frequency of partial vetoes since 1931. As this paper will show, the governor's partial veto is "unusual" and "quirky," as Judge Posner noted, but the partial veto is now in retreat. Two constitutional amendments in 1990 and 2008 and the recent supreme court decision in *Bartlett v. Evers* have curtailed the ways in which the governor can employ the partial veto. The future of the partial veto power as a way for the governor to play a significant role in the lawmaking process is diminished after *Bartlett* but for reasons that remain to be determined.

Origins and legislative history of the 1930 constitutional amendment

This section is divided into two parts. The first part provides an overview of the discussion from 1912 to 1924 on whether Wisconsin should or needed to adopt a constitutional amendment granting partial veto authority to the governor. The second part discusses the legislative history from 1925 onwards, leading up to the 1930 constitutional amendment and the first use of the partial veto power.

Origins

As Wisconsin entered the second decade of the twentieth century, a conversation concerning the role of the executive in appropriation bills came to light most prominently in a 1912 book called *The Wisconsin Idea* by Charles McCarthy.[8] In his book, McCarthy praised Wisconsin's existing appropriation methods in contrast to the customs in other states. In his view, Wisconsin's state appropriation method was advantageous "for all appropriation bills must receive the sanction of the joint committee on finance," and one by one, these appropriation bills were reported out to the legislature. Wisconsin's process allowed members of the legislature to consider each appropriation bill separately, with a statement of the actual finances of the state, to decide on its own merits whether to pass or kill the bill.[9] McCarthy further argued that Wisconsin was "fortunate" in not having a "budget bill,"—which he defined as "one inclusive bill containing all appropriations"[10]—stating that the budget bill was "a fruitful source of logrolling,[11] and in nearly all states has

8. Charles McCarthy, *The Wisconsin Idea* (New York: Macmillan Company, 1912). McCarthy's *The Wisconsin Idea* summarized the philosophy and goals of the Progressive movement. McCarthy served as the founder and chief of the Wisconsin Legislative Reference Bureau (then known as the Legislative Reference Library) from 1901 until succumbing to an illness in 1921.

9. McCarthy, *The Wisconsin Idea*, 201.

10. McCarthy, *The Wisconsin Idea*, 203. In his view, McCarthy lumps the "budget bill" with a system "that appropriations should be made for all state departments merely for a two year period," which "has no precedent on the face of the earth," 203.

11. In *State v. Zimmerman*, the Wisconsin Supreme Court defined logrolling as "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 or objectionable legislation attached to general appropriation bills in order

to be supplemented by other more dangerous machinery, such as the power of the governor to veto items in order to do away with riders."[12] Despite McCarthy's interpretation of Wisconsin's appropriation methods, his ideal description of the legislative process did not seem to match contemporary practice. A change in legislative process that started in 1911 would spark a vociferous debate over granting authority to the Wisconsin governor to veto single items in an appropriation bill during the 1913 legislative session.

Throughout the 1911 legislative session, the Wisconsin Legislature started the practice of packaging multiple appropriation measures into larger, omnibus bills. At the same time, a change in the form and comprehensiveness of appropriation measures began with the enactment of Chapter 583, Laws of 1911,[13] which required any administrative body that dealt with "receipts, expenditures, or handling of any state funds" to submit an "estimate of its revenues and expenditures for each fiscal year of the ensuing biennial period."[14] The 1913 legislature was the first to contend with this new statute at the same time as the legislature continued the practice of bundling appropriation bills. Yet lawmakers waited until late in the session before presenting to the governor a few appropriation bills, which also happened to call for record expenditures.[15] These factors would prove to be formidable obstacles to Governor Francis E. McGovern.[16] Thus the public debate over granting authority to the Wisconsin governor to veto single items in an appropriation bill arose from McGovern's frustration with the Committee on Finance's handling of appropriation bills. Over 30 percent of the session's appropriations were for the state university and the state normal schools.[17]

According to McGovern, the 1913 legislature appropriated nearly $25 million and included four-fifths of it in "blanket bills."[18] McGovern argued that these singular "omnibus bills," which carried "from fifty to one hundred items," were reported out at the last minute so as to make it impossible "to determine the wisdom of the appropriation" much

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to force the governor to veto the entire bill and thus stop the wheels of government or approve the obnoxious act," 447–48.

12. McCarthy, *The Wisconsin Idea*, 202.

13. Ch. 583, Laws of 1911. Note that prior to 1983, Wisconsin referred to enacted legislation as "chapters" instead of "acts."

14. Ch. 583, Laws of 1911, took effect on July 8, 1911. It created the State Board of Public Affairs, the board that would oversee submitted estimates in an attempt to introduce a more formalized "budget system." It seems likely that this act and the increasing reliance on bundling appropriation bills led to various procedural changes in the legislature's "budget system" and culminated in the provision for a biennial executive budget bill by Ch. 97, Laws of 1929.

15. Tax projections had made it apparent that revenues would fall significantly short of appropriations, and McGovern authorized a supplementary levy of $1.5 million to pay for it. Thus, criticism for McGovern's administration began as soon as he signed the appropriation bills.

16. Francis E. McGovern served as Wisconsin's twenty-second governor from 1911 to 1915.

17. The 1913 legislature appropriated nearly $25 million, of which 32 percent (or $8 million) was appropriated for the state university and the state normal schools. A "normal school" is the historical term for an institution created to train high school graduates to be teachers by educating them in the norms of pedagogy and curriculum; for more information, see Wisconsin Board of Regents of Normal Schools, *The Normal Schools of Wisconsin: Catalog, 1911–1912* (Madison, WI: Democrat Printing Company, 1912).

18. The term "blanket bill" is used synonymously with bundled appropriation bills. *Wood County Reporter*, "Signs Money Bill Under a Protest: Governor States His Desire to Veto Items in University Appropriation," August 14, 1913, 7; *The Dunn County News*, "Governor Asks for More Power," August 12, 1913, 1.

less have enough time for the legislature to potentially override his veto or pass another bill.[19] The legislature's practice "tie[d] the hands of the executive, and he practically ha[d] no alternative except to approve of the appropriations as a whole." McGovern concluded that either the Wisconsin governor must be given the power to veto specific items or the individual items must be reported out as separate appropriation bills. From the perspective of the legislature during that session, F. M. Wylie, the senate chief clerk, maintained that the "veto power of the governor should be abolished, instead of extended to items of the budget appropriation bills."[20]

Meanwhile, during the fall of 1913 and spring of 1914, McGovern's decision not to veto the appropriation bills instigated his promotion of the idea that the Wisconsin governor should be given the equivalent of a line item veto. McGovern's public campaign forced a rather public debate between McGovern and Charles McCarthy. McCarthy declared that "[t]he greatest joker now existing in America is the executive veto of items in an appropriation bill."[21] For the handling of state finances, McCarthy openly reiterated ideas from his 1912 book, *The Wisconsin Idea*,[22] reiterating that it promotes "inefficiency, corruption, and logrolling."[23] Privately, McCarthy wrote to McGovern suggesting that McGovern was making a mistake "to stand for the veto of appropriation items."[24] McGovern responded to McCarthy's public and private statements, suggesting that "there was enough discord in the Capitol and enough evidence of want of harmony in the Progressive camp without any further proof of insurgency."[25] The disharmony remained, and at the general election in November 1914, McGovern lost his bid for a U.S. Senate seat,[26] effectively ending the campaign for partial veto authority for the next decade.[27]

Even the newly elected Wisconsin governor, Emanuel L. Philipp,[28] knew he was not

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19. Associated Press, "M'Govern Criticises State Legislature," printed in *Janesville Daily Gazette*, September 18, 1913, 1. McGovern's comments were delivered in an address at the Fox River Valley Fair.

20. *Janesville Daily Gazette*, "Want's Veto Power in People's Hands," April 17, 1914, 1. Senate Chief Clerk Wylie added that the referendum, when made a part of the constitution will provide a veto power by the people," therefore "the veto of the governor should then at the most be merely advisory, as are his messages . . ."

21. *La Crosse Tribune*, "Dr. Charles McCarthy Does Not Concur with Governor McGovern as to This Budget as Out- lined with Appropriations by Separate Bills Solution of Reference Expert," April 4, 1914, 10.

22. Although, McCarthy seemed to have softened his stance on the idea of a "budget bill." In an interview, McCarthy stated that "he [did] not wish to be understood as opposing the budget system," but instead argued that "the legislature ought to pass on each bill separately to avoid pork-barrel, rider-covered legislation." Interview appeared in an article by Ellis B. Usher, "General Confusion, Leader in Politics in Wis-Con-Sin: Nobody Knows and Nobody Cares about State Affairs and the Cost Goes Up," *Leader-Telegram*, April 12, 1914, 12.

23. *La Crosse Tribune*, "Dr. Charles McCarthy Does Not Concur with Governor McGovern as to This Budget as Out- lined with Appropriations by Separate Bills Solution of Reference Expert," April 4, 1914, 10.

24. Francis E. McGovern papers (1909–15, 1935), Box 15, Letter to McCarthy dated April 1, 1914.

25. Francis E. McGovern papers (1909–15, 1935), Box 15, Letter from McCarthy dated April 6, 1914.

26. McGovern chose to not seek a third term for governor and instead ran for the U.S. Senate seat.

27. In addition, the Wisconsin electorate defeated ten proposed constitutional amendments on the 1914 ballot with an average of 84,416 voting against each measure; this may also explain why constitutional amendments did not appear on an election ballot until April 1920 and no amendment was ratified until 1922.

28. Emanuel L. Philipp served as Wisconsin's twenty-third governor from 1915 to 1921. Emanuel L. Philipp stated that his election to the governor's office was "a complete repudiation of the much heralded Wisconsin idea" and proof that the people of Wisconsin "have had enough of experimental legislation"; see *The Madison Democra*t, "'Wisconsin Idea' Given Rebuke by

immune to the same appropriations process. In a special message sent to the legislature in May 1915, Governor Philipp requested that appropriations be made in many separate bills.[29] In his message, Philipp stated that separate appropriation bills were the "only way in which the governor may discharge his constitutional duty to approve or disapprove appropriations without causing unnecessary trouble and delay for the legislature."[30] Philipp concluded his statements by saying that "it [was] advisable to send the appropriation bills here in such form as will enable him to disallow such items as he deems inadvisable, while approving of all items which seem to him advisable."[31]

Nevertheless, debates on executive veto power waned and did not resurface until a decade later.

Legislative history of the 1930 constitutional amendment

The partial veto power as exercised by Wisconsin's governors was created by constitutional amendment in 1930, and the road to ratification started five years earlier. In 1925, two resolutions to expand the governor's veto powers were introduced.[32] Senator Max W. Heck introduced the first proposal, 1925 Senate Joint Resolution 8, which authorized the governor to withhold approval from any portion of any bill, which would not become law until the executive's wishes were complied with or the legislature overrode the veto by a two-thirds vote.[33] Heck's proposal was rejected in favor of the second proposal,[34] Senator H. B. Daggett's 1925 Senate Joint Resolution 23,[35] which proposed the following language relevant to the current discussion to amend article V, section 10, of the Wisconsin Constitution:

Badger Electors," November 8, 1914; *Racine Journal Times*, "My Election is a Contract with the People to Reduce the State's Expenditures," January 14, 1915, 3; as well as generally the *Milwaukee Journal*, November 4, 1914, and the *Milwaukee Free Press*, November 8, 1914. Philipp threatened to close the Legislative Reference Library in 1915 because it was seen as a progressive "bill factory"; see *La Crosse Tribune*, "Economy is Plea of Governor E. L. Philipp in his First Message: Favors Abolition of the Reference Bureau," (January 14, 1915), 1 and 10; Emanuel L. Philipp, "Governor's Message to Legislature, dated January 14, 1915," published in *Messages to the Legislation and Proclamations of Emanuel L. Philipp* (Milwaukee, WI: Wisconsin Printing Company, 1920), 11.

29. Emanuel L. Philipp's Executive Communication sent May 18, 1915, published in *Journal Proceedings of the Fifty-Second Session of the Wisconsin Legislature in Assembly* (Madison, WI: Cantwell Printing Co., 1915), 856–65; Emanuel L. Philipp, "Special Executive Communication to Legislature, dated May 18, 1915," published in *Messages to the Legislation and Proclamations of Emanuel L. Philipp* (Milwaukee, WI: Wisconsin Printing Company, 1920), 67–77. See also *Eau Claire Leader,* "Governor Wants State Funds Cut: Governor in Message Warns Expenses Now Exceed Income," May 21, 1915, 5.

30. Philipp message, Assembly Journal, 865.

31. Philipp message, Assembly Journal, 865.

32. John J. Blaine served as Wisconsin's twenty-fourth governor from 1921 to 1927.

33. The section would have read (amended text in italics) "Every bill which shall have passed the legislature shall, before it becomes law, be presented to the governor; if he approves, he shall sign it, but if not, he shall return it, with his objections, *which may or may not contain recommendations for the adoption of such amendments to the bill as will, when incorporated therein, remove such objections*, to that house in which it shall have originated, who shall enter the objections at large upon the journal and proceed to reconsider it. *If such recommendations as to amendment are included in the objections, and after reconsideration, a majority of the members present shall agree to adopt the amendment recommended, the bill shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if such amendment is adopted by a majority of the members present, the bill as amended shall become law. If such recommendations as to the amendment are not included in the objections, or if they are not adopted by a majority present in either house, the house in which the bill shall have originated shall proceed to reconsider it*, and if, after such reconsideration, two-thirds of the members present."

34. The Committee on Judiciary reported and recommended rejection of 1925 Wis. SJR 8 on April 29, 1925.

35. The drafting file for 1925 Wis. SJR 23 does not exist.

> The governor may disapprove or reduce items or parts of items in any bill appropriating money. So much of such bill as he approves shall upon his signing become law. As to each item disproved or reduced, he shall transmit to the house in which the bill originated his reasons for such disapproval or reduction, and the procedure as to such items shall then be the same as in the case of a bill disapproved as a whole.

Although the resolution received a favorable committee recommendation,[36] the senate refused to adopt the joint resolution by a 14 to 9 margin.[37] Neither proposal caused much fanfare or reaction from the media.

During the 1927 legislative session, Senator William Titus introduced another resolution to amend the constitution.[38] Titus's resolution, 1927 Senate Joint Resolution 35, proposed the following language (amended text in italics):

> Every bill which shall have passed the legislature shall, before it becomes a law, be presented to the governor; if he approve, he shall sign it, but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large upon the journal and proceed to reconsider it. *Appropriation bills may be approved in whole or in part by the governor, and the part approved shall become law, and the part objected to shall be returned in the same manner as provided for other bills*. If, after such reconsideration, two-thirds of the members present shall agree to pass the bill, *or the part of the bill objected to*, it shall be sent, together with the objection, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of the members present it shall become a law. But in all such case the votes of both houses shall be determined by yeas and nays, and the names of the members voting for or against the bill *or the part of the bill objected to*, shall be entered on the journal of each house respectively. If any bill shall not be returned by the governor within six days (Sundays excepted) after it shall have been presented to him, 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.[39]

The language of Titus's proposal differs from the two proposals introduced in the previous legislative session, most notably in what the governor may reject in an appropriation bill; in 1925, "the governor may disapprove or reduce items or parts of items in any bill appropriating money"; while in 1927, the governor may approve appropriation bills "in whole or in part." The drafting record for 1927 Enrolled Joint Resolution 37 indicates that Senator William Titus requested the Legislative Reference Library to draft a resolution "to allow the Governor to veto items in appropriation bills." Nothing in the drafting record sheds any light on the use of the word "part" as opposed to "item" in reference to

36. The Committee on Judiciary reported and recommended adoption of 1925 Wis. SJR 23 on April 29, 1925.

37. This rejection occurred on May 1, 1925. Note that nine senators were absent or not voting.

38. Fred R. Zimmerman served as Wisconsin's twenty-fifth governor from 1927 to 1929.

39. 1927 Wis. SJR 35 was published as 1927 Enrolled Joint Resolution 37, 1927.

the veto power. Titus's proposed amendment passed both houses and proved to be once again uncontroversial.[40] During the 1929 legislative session, Senator Thomas M. Duncan introduced the same resolution, 1929 Senate Joint Resolution 40.[41] Once again the proposal passed both houses[42] and was to be submitted for voter approval at the general election in November 1930.[43]

In the 18 months leading up to the election, several arguments were advanced in support of, or opposition to, the proposed constitutional amendment. These arguments should sound familiar because they basically mirrored the discussion from 15 years earlier. Most discussions on the amendment summarized the proposed power of the governor "to veto single items" in appropriation bills rather than "parts of" appropriation bills.

Proponents of the amendment argued that the new budgetary procedure adopted by the 1929 legislature compelled the executive item veto authority.[44] Under the newly adopted budget system, Senator Duncan noted that although the governor was responsible for introducing an original budget bill, a hostile legislature had the power to "embarrass the governor by increasing the amounts of separate items in it."[45] The governor was left with two choices to counteract the legislature's approach: sign the budget bill or veto it in its entirety; either action would bring Wisconsin back to the old system of "buck-passing," whereby the governor and the legislature disclaim responsibility for large appropriations, which the new system had been "designed to eliminate."[46] Many proponents argued that the proposal to grant the governor power to veto separate appropriation items in conjunction with the new budget procedure would rebalance the powers of the executive and legislative branches and provide another means of checking and controlling "illegal and extravagant expenditures."[47] Another paper indicated that "the definiteness of responsibility" for both the governor and the legislature was "a paramount necessity in good government in view of increasing complexity of state affairs."[48]

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40. The resolution passed the senate on March 17, 1927, and the assembly on May 5, 1927. *Capital Times*, "Beats Plan for Repeal of Car Tax," (March 15, 1927), 1. The article categorized the joint resolution as such: "This would allow that executive to return unfavored appropriations to the legislators, at the same time passing others in the same bill thus speeding the legislative work."

41. Walter J. Kohler Sr. served as Wisconsin's twenty-sixth governor from 1929 to 1931.

42. 1929 Wis. SJR 40 was published as 1929 Enrolled Joint Resolution 43, 1929.

43. The resolution passed the senate on March 7, 1929, and the assembly on April 19, 1929.

44. Among other provisions, Ch. 97, Laws of 1929, created the State Budget Bureau in the executive department and provided for a state budget system. Under Chapter 97, the governor was made responsible for the budget estimates, which were then incorporated into a single appropriation bill. Since the advent of program budgeting in the early 1960s, governors have usually submitted single omnibus budget bills that contain both program and fiscal proposals. Senator Duncan noted that the amendment "merely g[ave] back to the governor the power [the legislature] took away when [they] passed the budget system" during the 1929 legislative session; see *Capital Times*, "Duncan Tells Need for New Vote Powers," October 14, 1930, 7.

45. *Capital Times*, "League of Voters Draws Attention to Voting at Election on Tuesday," November 2, 1930, 16; *Capital Times*, "Duncan Tells Need for New Vote Powers," October 14, 1930, 7.

46. *Capital Times*, "Duncan Tells Need for New Vote Powers," October 14, 1930, 7.

47. *Racine Times-Call*, "The Budget System," published in the *Rhinelander Daily News*, December 8, 1930, 4. In addition, the column concluded by stating that "[a]ny attempt to emasculate or repeal it will be a confession of weakness and incompetency."

48. *Leader-Telegram*, "The Amendment," November 2, 1930, 14.

Opposition to the amendment represented more than a minor correction in Wisconsin's appropriation process. Granting more veto authority further extended the already broad powers of the executive and resulted in the strengthening of executive power at the expense of the legislative. Philip La Follette, who made the issue part of his campaign for governor in 1930, became the leading voice of the opposition. At a campaign rally less than a week before the election, La Follette argued that the proposal "smack[ed] of dictatorship."[49] From La Follette's perspective and those with like-minded views, opinions in favor of the amendment were based on proponents' faulty premises because they assumed a greater likelihood that the "dictatorial powers" would "be used benevolently for the whole public interest." He concluded by offering that "dictatorship or dictatorial powers appear efficient and desirable until their crushing effect is felt in actual operation."[50]

The ballot question appeared as follows: "Shall the constitutional amendment, proposed by Joint Resolution No. 43 of 1929, be ratified so as to authorize the Governor to approve appropriation bills in part and to veto them in part?" In terms of explaining the question on the ballot, Secretary of State Theodore Dammann stated that "if this amendment is ratified the Governor will be authorized to approve appropriation bills in part and to veto them in part."[51]

At the general election held on November 4, 1930, the Wisconsin electorate ratified the constitutional amendment by a vote of 252,655 for and 153,703 against.[52] The amendment added the following language to article V, section 10, of the Wisconsin Constitution:

> Appropriation bills may be approved in whole or in part by the governor, and the part approved shall become law, and the part objected to shall be returned in the same manner as provided for other bills.

At the very same election, Philip La Follette became Wisconsin's twenty-seventh governor[53] and became the first governor to make use of the partial veto in 1931. La Follette exercised the "new right of partial veto" twice.[54] La Follette's first partial veto removed an appropriation in a bill on wage payments.[55] La Follette's second partial veto dealt with appropriations in the executive budget bill.[56]

In his veto message on the executive budget bill, Governor La Follette gave his views on the partial veto and what he construed its limits to be.

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49. *Capital Times*, "Phil in Speech at Whitehall, Opposes Giving Governor Further Veto Power," October 30, 1930, 5.

50. *Leader-Telegram*, "Phil Opposes Constitutional Amendment," November 1, 1930, 12.

51. Office of the Secretary of the State of Wisconsin, Notice of Election, published September 13, 1930.

52. The measure passed by a majority of 98,952 and carried 66 of the 71 counties.

53. La Follette served as governor from 1931 to 1933.

54. *Capital Times*, "487 New Laws were Enacted by Legislature," July 28, 1931, 2.

55. 1931 Wis. AB 48 was published on April 24, 1931, as Ch. 66, Laws of 1931. The act amended statutes related to the waiting period under the worker's compensation act.

56. 1931 Wis. AB 107 was published on April 27, 1931, as Ch. 67, Laws of 1931.

> Since both the Executive Budget and Bill No. 107, A., decrease the appropriations for many of the agencies and departments from what they received in 1930–31, it consequently follows that the Executive cannot veto these items without increasing the appropriation over that provided in Bill No. 107, A. For example, the University of Wisconsin received for operation in 1930–31—$2,990,663. This appropriation continues until and unless changed by the Legislature, and would provide the University, if left unchanged, with $5,981,326 for the coming biennium, Under the Executive Budget recommendations, this particular item was decreased $151,326 for the coming biennium. Bill No. 107, A., increases the Executive Budget recommendations for this item by $80,000. If the Executive were to disapprove of this item in Bill No. 107, A., he would not restore the University appropriation for operation to that provided in the Executive Budget. The veto of this item in Bill No. 107, A., would instead restore the appropriation to that provided by the Legislature of 1929 and would thereby increase the appropriation by $71,326 over that provided in Bill No. 107, A.
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> In the exercise of the authority to veto parts of appropriation bills, the Executive is therefore confined practically, at the present time, to those items in Bill No. 107, A., where the veto will in fact reduce the total appropriation.[57]

The legislature "showed no displeasure at the governor's action."[58]

Discussion and debate on the subject of the partial veto spanned over two decades, including six governors and eleven legislative sessions. Arguments for and against the constitutional amendment remained the same—even the ambiguity of language, specifically in the use of "items" versus "parts," not only among resolutions, but also in media discussion.

Judicial interpretation of governor's partial veto powers

There have been nine Wisconsin Supreme Court decisions interpreting the governor's partial veto power.[59] Six of the cases involved the original 1930 version of article V, section 10, of the Wisconsin Constitution, two of the cases dealt with the partial veto provision after the 1990 amendment, and one case considered the partial veto provision after the 2008 amendment. There has also been one federal appellate decision, addressing the question of whether the governor's partial veto power violated the federal Constitution.[60]

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57. Governor Philip La Follette, "Governor's Message to the Legislature, dated April 21, 1931," published in the *Assembly Journal Proceedings of the Sixtieth Session of the Wisconsin Legislature* (Madison, WI: Cantwell Printing Co., 1931), 1135–41.

58. William L. Thompson, "The Legislative Week," from *Associated Press* published in the *Leader-Telegram*, April 26, 1931.

59. State ex rel. Wisconsin Telephone Co. v. Henry, 218 Wis. 302, 260 N.W. 486 (1935); State ex rel. Finnegan v. Dammann, 220 Wis. 134, 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); Citizens Utility Board v. Klauser, 194 Wis. 2d 484, 534 N.W.2d 608 (1995); Risser v. Klauser, 207 Wis. 2d 176, 558 N.W.2d 108 (1997); Bartlett v. Evers, 2020 WI 68.

60. Risser v. Thompson, 930 F.2d 549 (1991). In this case, the court held that the partial veto did not violate the federal Constitution.

There have been no state or federal cases interpreting the 2008 amendment to the partial veto provisions of article V, section 10. All of these cases address the intent and application of the governor's partial veto power and together devise tests for when and how the governor may partially veto bills. As seen in the discussion of case law below, Wisconsin courts during the 1935–95 period generally favored an expansive view of the governor's partial veto power. Since the end of that period, the governor's partial veto power has eroded and after *Bartlett* it is uncertain what even remains of the power.

State ex rel. Wisconsin Telephone Co. v. Henry (1935). This was the first partial veto case to come before the court and involved the governor's partial veto of an emergency relief bill in which he approved the appropriations in the bill but vetoed the provisions relating to the appropriations. The issue was whether the governor could partially veto non-appropriation provisions. The court held that the governor could partially veto non-appropriation text in an appropriation bill, announcing its first test for a valid partial veto: what must remain after a partial veto is "a complete, entire, and workable law."[61] In other words, the part vetoed must be separable from the parts not vetoed to leave a coherent whole. The court also noted that the governor's partial veto power was "intended to be as coextensive as the legislature's power to join and enact separable pieces of legislation in an appropriation bill."[62] This observation would become important in later cases when the court would examine what constitutes a "part" of an appropriation bill. Although the court allowed the governor's partial veto to stand, the court implied that in some cases conditions or provisos attached to appropriations may not be severable. In other words, there could be substantive limitations on the partial veto power. In such instances, the governor could not veto text relating to the expenditure of appropriated moneys without vetoing the entire appropriation.

State ex rel. Finnegan v. Dammann (1936). The issue in this case was whether a bill that the governor had partially vetoed contained an appropriation. The bill did not create or amend an appropriation, but it affected the amount that could be expended under an existing appropriation by raising motor vehicle fees, which were then credited to a continuing appropriation. The court laid out the key features of an appropriation bill, and defined an appropriation: (1) "A measure before a legislative body authorizing the expenditure of public moneys and stipulating the amount, manner, and purpose of the various items of expenditure"; (2) "An appropriation . . . means the setting apart a portion of the public funds for a public purpose"; and (3) "An appropriation is 'the setting aside from the public revenue of a certain sum of money for a specified object, in such manner that the executive officers of the government are authorized to use that money, and no more, for that object, and no other.'"[63] This definition would guide the court in future cases.

61. 218 Wis. 302, 314 (1935).

62. 218 Wis. 302, 315 (1935).

63. 220 Wis. 134, 148 (1936).

The court found that the bill was not an appropriation bill, but a revenue bill; hence, the governor could not partially veto the bill. The court stated that an appropriation bill must "within its four corners contain an appropriation."[64] Raising revenues was therefore not the same as appropriating moneys. Importantly, the court held, it does not matter if a bill "has an indirect bearing upon the appropriation of public moneys."[65] Instead, the bill must specifically appropriate moneys.

Here is the "four corners" test that later cases would use to determine if a bill is an appropriation bill, subject to the partial veto. The bill must contain an appropriation.

State ex rel. Martin v. Zimmerman (1940). In this case, the governor vetoed whole sections, subsections, and paragraphs of a bill to embark on an entirely new policy direction different from what the legislature intended. The issue in this case was whether the governor could make these kinds of affirmative policy changes through a partial veto. The court discussed the reasons for the partial veto power: 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 the governor to veto the entire bill and thus stop the wheels of government or approve the obnoxious act."[66] In other words, the partial veto power was a means to undo the bundling of appropriation provisions that before 1911 had appeared in individual bills. After the 1911 session, the legislature bundled individual appropriation bills to force the governor to sign or veto the bill in its entirety.

The court acknowledged that the governor's veto "did effectuate a change in policy" but said the test for a valid partial veto is "whether the approved parts, taken as a whole, provide a complete workable law."[67] The constitutional focus for partial veto jurisprudence was on what remains in an appropriation bill after partial veto, not on what is removed from the bill or on whether the policies that remain in the bill are the same as those passed by the legislature.

State ex rel. Sundby v. Adamany (1976). This case involved a local tax referendum bill that permitted local governments to exceed levy limits. The governor's partial veto made these referenda mandatory instead of optional, undoing what the legislature had intended and passed. The court upheld the veto and summarized the core features of the governor's partial veto power. The partial veto was adopted to prevent logrolling and omnibus appropriation measures. The court held that the governor can partially veto all parts of an appropriation bill, even non-appropriation text, and the test is "whether or not the provisions vetoed constituted a separable portion of the entire bill."[68] The partial

64. 220 Wis. 134, 147 (1936).

65. State ex rel. Finnegan v. Dammann, 220 Wis. 134, 148, 264 N.W. 622 (1936).

66. State ex rel. Martin v. Zimmerman, 233 Wis. 442, 448–49, 289 N.W. 662 (1940).

67. 233 Wis. 442, 450 (1940).

68. State ex rel. Sundby v. Adamany, 71 Wis. 2d 118, 129, 237 N.W.2d 910 (1976).

veto can change public policy "as long as the portion vetoed is separable and the remaining provisions constitute a complete and workable law."[69] A bill subject to the partial veto "must contain an appropriation within its four corners, rather than merely affecting another law which contains an appropriation."[70] The governor's partial veto power was "intended to be as coextensive as the legislature's power to join and enact separable pieces of legislation in an appropriation bill."[71] Finally, "the governor's action may alter the policy as written in the bill sent to the governor by the legislature."[72]

State ex rel. Kleczka v. Conta (1978). In this case, the court made clear that the governor could veto provisions that were conditions or provisos on an appropriation without vetoing the entire appropriation, reversing the implication from language in *Henry*.[73] In this instance, the governor had partially vetoed appropriation provisions in a bill that turned an income tax add-on into an income tax checkoff, thereby requiring a general fund expenditure for the checkoff. This was the most expansive use of the partial veto power to date. The court also held that "Severability is indeed the test of the Governor's constitutional authority to partially veto a bill" and that it "must be determined, not as a matter of form, but as a matter of substance."[74]

The court distinguished the "partial veto" power from the "item veto" power, observing that in item veto states "the Governor is confined to the excision of appropriations or items in an appropriation bill."[75] This is not true for a partial veto. The partial veto test is whether what remains after a veto is a "complete and workable law."[76] The court noted that "a governor's partial veto may, and usually will, change the policy of the law."[77] The court restated that the governor's partial veto "authority is coextensive with the authority of the Legislature to enact policy initially."[78] Finally, the court called the *Henry* language on appropriation conditions and provisos mere *dicta*, which "does not correctly state the Wisconsin law."[79] All parts of an appropriation bill are subject to the governor's partial veto.

State ex rel. Wisconsin Senate v. Thompson (1988). At issue in this case was the governor's partial veto of phrases, digits, letters, and word fragments in an executive budget bill, so as to create new words, sentences, and dollar amounts. This was known as the "Vanna White" veto. The court upheld this new use of the partial veto, affirming that

69. 71 Wis. 2d 118, 130 (1976).

70. 71 Wis. 2d 118, 131 (1976).

71. 71 Wis. 2d 118, 133 (1976).

72. 71 Wis. 2d 118, 134 (1976).

73. State ex rel. Wisconsin Telephone Co. v. Henry, 218 Wis. 302, 313–14, 260 N.W. 486 (1935).

74. State ex rel. Kleczka v. Conta, 82 Wis. 2d 679, 704–05, 264 N.W.2d 539 (1978).

75. 82 Wis. 2d 679, 705 (1978).

76. 82 Wis. 2d 679, 707 (1978).

77. 82 Wis. 2d 679, 708 (1978).

78. 82 Wis. 2d 679, 709 (1978).

79. 82 Wis. 2d 679, 715 (1978).

"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."[80] This literal reading of the word "part" meant that every part of an appropriation bill, including action phrases, letters, punctuation, and digits, could be partially vetoed. But the court also held that "the consequences of any partial veto must be a law that is germane to the topic or subject matter of the vetoed provisions."[81] In other words, the part that remained after a partial veto must be germane to the part that was vetoed. In fact, the court noted that the germaneness requirement has "achieved the force of law."[82]

To justify its expansive reading of partial veto power, the court claimed that the purpose of the partial veto was more than to prevent logrolling. Instead, "the partial veto power in this state was adopted . . . to make it easier for the governor to exercise what this court has recognized to be his 'quasi-legislative' role, and to be a pivotal part of the 'omnibus' budget bill process."[83] In other words, the partial veto was "aimed at achieving joint exercise of legislative authority by the governor and legislature over appropriation bills."[84] What the legislature could put together, the governor could undo, even if it involved creating new words and numbers. Finally, the court added that "the test applied to determine the validity of the governor's partial vetoes is not one of grammar . . . Awkward phrasing, twisted syntax, alleged incomprehensibility and vagueness are matters to be resolved only on a case-by-case basis."[85]

It was in the wake of this decision that the legislature hurriedly adopted a proposed amendment to the constitution, which was approved by the voters in 1990, to prohibit the governor, in approving an appropriation bill, from creating a new word by rejecting individual letters in the words of the enrolled bill.

Citizens Utility Board v. Klauser (1995). The issue in this case was whether the governor may partially veto an appropriation bill by striking an appropriation amount and writing in a lower amount. In other words, the issue involved whether the governor could use the partial veto to create new appropriation amounts that did not appear in the bill. The court found the write-down of an appropriation amount a valid exercise of the governor's partial veto power, contending that a reduced appropriation amount is a "part" of the amount originally appropriated in the bill, relying on the *Henry* literal dictionary definition of "part."

This was the first case after the 1990 amendment, which had limited the governor's

80. State ex rel. Wisconsin Senate v. Thompson, 144 Wis. 2d 429, 437, 424 N.W.2d 385 (1988).

81. 144 Wis. 2d 429, 437 (1988).

82. 144 Wis. 2d 429, 452–53 (1988).

83. 144 Wis. 2d 429, 446 (1988).

84. 144 Wis. 2d 429, 454 (1988).

85. 144 Wis. 2d 429, 462–63 (1988).

partial veto power, and the court ruled again in favor of an expanded partial veto power. Interestingly, the court acknowledged its practice of expansively reading the partial veto power: "this court has, for better or for worse, broadly interpreted that power . . . [and so its decision] will likely come as a surprise to few."[86]

Risser v. Klauser (1997). This case involved the governor's write-down of a non-appropriation amount—a cap on bonding—in an appropriation bill. The issue was whether the governor could write down lower non-appropriation amounts, as the *Citizens Utility Board* court had allowed the governor to do on appropriation amounts. The court held that in exercising partial veto power, the governor could not write down non-appropriation amounts. Instead, the governor could just strike digits of non-appropriation amounts. This was the first real limitation of the partial veto power in Wisconsin case law, other than in cases in which the court found that the governor had attempted to partially veto a non-appropriation bill. In reaching its decision, the court noted that "an appropriation involves an expenditure or setting aside of public funds for a particular purpose."[87] This was a restatement of the *Finnegan* definition of an appropriation. The court rejected the argument that bonding caps affect the appropriation of state funds and should therefore be treated like appropriations. The court said that "the fact that a provision generates revenue and affects an appropriation because the amount appropriated is determined by the amount of revenue generated does not convert the bill into an appropriation bill nor the provision into an appropriation."[88]

The court reasoned that a bill does not become an appropriation bill because it affects an appropriation, nor does a provision in a bill become an appropriation simply because it affects an appropriation. Significantly, the court pointed out that the bonding caps were not in chapter 20 of the Wisconsin Statutes: "Because Wisconsin bill drafters follow the statutory directive to list appropriations in chapter 20, and because we have the benefit of the clear *Finnegan* rule, we avoid the repeated need to resolve this question of whether a provision is an appropriation or a bill is an appropriation bill."[89] Under *Risser v. Klauser*, there is a litmus test of sorts: a bill is not an appropriation bill if it does not treat a chapter 20 appropriation.[90]

Bartlett v. Evers (2020). This case involved a challenge to four partial vetoes to 2019 Wisconsin Act 9, the 2019–21 biennial budget act. The first veto changed a program to award grants to replace or modernize school buses into one to provide grants for al-

86. Citizens Utility Board v. Klauser, 194 Wis. 2d 484, 502, 534 N.W.2d 608 (1995).

87. Risser v. Klauser, 207 Wis. 2d 176, 193, 558 N.W.2d 108 (1997).

88. 207 Wis. 2d 176, 196 (1997).

89. 207 Wis. 2d 176, 198 (1997).

90. It is not at all certain that the chapter 20 test is a conclusive test for whether a bill contains an appropriation. After all, the legislature could enact legislation that intentionally created a new appropriation in a statutory chapter other than chapter 20. In such a case, it is hard to imagine the court finding the bill is not an appropriation bill because there is no chapter 20 provision in the bill.

ternative fuels.[91] The second veto changed a program to award $90,000,000 in grants specifically for local road improvements into one to award $75,000,000 generally for local grants.[92] The third veto increased the amount of vehicle registration fees over that provided in the enrolled bill.[93] The fourth veto expanded a vapor products tax.[94] In a per curium decision, the court found that the first, second, and fourth partial vetoes were unconstitutional, but upheld the third veto. Significantly, among the five justices who found the first and second partial vetoes unconstitutional, among the four justices who found the fourth veto unconstitutional, and among the five justices who upheld the third partial veto, there was no opinion that garnered the support of a majority of justices.

The partial vetoes at issue in *Bartlett* differ little from partial vetoes made regularly by governors of both political parties, at least since *Kleczka*. That the court found three of the vetoes unconstitutional signals a new willingness of the court to rein in the governor's partial veto power. There are four opinions in *Bartlett*, each of which provides a different test for determining the constitutionality of a partial veto.

Justice Ann Walsh Bradley, whose opinion was joined by Justice Rebecca Frank Dallet, found all four partial vetoes constitutional based entirely on the "complete, entire, and workable law" test first proposed in *Henry* and followed by all courts thereafter.[95] This test allows the governor to partially veto numbers, words within sentences, entire sentences, and paragraphs, as well as write in entirely new appropriation numbers, so long as what remains after the partial veto is a complete, entire, and workable law. Justice Bradley affirms that cases before *Bartlett* provided a clear, objective test for a valid partial veto. Interestingly enough, with respect to the *Wisconsin Senate* requirement that a veto be germane, she notes that no case has ever been decided on germaneness and in fact refers to germaneness as "a scantily referenced limitation."[96] In her opinion, all four vetoes resulted in complete, entire, and workable law, which she describes as "the time-honored test."[97]

Chief Justice Patience D. Roggensack found the school bus modernization and the local road improvement grants vetoes unconstitutional, but upheld the vehicle registration fee and the vapor tax vetoes. Her opinion takes seriously and advances to the level of a strict constitutional test the germaneness requirement discussed in *Wisconsin Senate*

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91. 2019 Wis. Act 9, sections 55c and 9101 (2i). See "Executive Partial Veto of Assembly Bill 56," *LRB Reports* 3, no. 7 (Madison, WI: Legislative Reference Bureau, July 2019), 35–36.

92. 2019 Wis. Act 9, sections 126 [as it relates to s. 20.395 (2) (fc)], 184s, and 1095m. See "Executive Partial Veto of Assembly Bill 56," *LRB Reports* 3, no. 7 (Madison, WI: Legislative Reference Bureau, July 2019), 53.

93. 2019 Wis. Act 9 section 1988b. See "Executive Partial Veto of Assembly Bill 56," *LRB Reports* 3, no. 7 (Madison, WI: Legislative Reference Bureau, July 2019), 52.

94. 2019 Wis. Act 9, section 1754. See "Executive Partial Veto of Assembly Bill 56," *LRB Reports* 3, no. 7 (Madison, WI: Legislative Reference Bureau, July 2019), 51.

95. Bartlett v. Evers, 2020 WI 68, ¶¶ 109, 161.

96. 2020 WI 68, ¶ 130.

97. 2020 WI 68, ¶ 161.

and *Citizens Utility Board*.[98] She proposes that a valid partial veto "must not alter the topic or subject matter of the 'whole' bill before the veto." In other words, a partial veto must "not alter the stated legislative idea that initiated the enrolled bill."[99] The chief justice's focus is on the "legislative idea" that is reflected in the text of the bill; the governor, in exercising the partial veto, may not create a new idea. As she puts it, "the governor's signature to a topic or subject matter conceived by the governor . . . is outside of the governor's constitutional authority."[100]

Applying this germaneness or topicality test, Chief Justice Roggensack finds that the school bus modernization and the local road improvement grants vetoes resulted in topics or subjects not found in the enrolled bill. There was no alternative fuel grant or undefined local grant in the enrolled bill. For that reason, these vetoes are invalid. In contrast, the partial vetoes to negate the legislature's registration fee reduction for vehicles of a certain weight and to expand the vapor products tax were on subjects in the enrolled bill. The governor did not create the topics or subjects. While the governor certainly modified the subjects, he did so in a way that did not fundamentally alter the idea, but remained germane to the subjects vetoed.

Justice Daniel Kelly, whose opinion was joined by Justice Rebecca Grassl Bradley, held that all four vetoes were unconstitutional. His opinion consists of a structural analysis of the lawmaking process, the role of the governor and legislature in that process, and the constitutional requirements for a validly enacted law. Like the chief justice, he acknowledges "that the most elemental part of a bill is an idea."[101] It is an idea that becomes a law or, as he says, "an idea expressing a potential complete, entire, and workable law."[102] Justice Kelly's opinion contains a careful analysis of how courts beginning with *Henry* have understood and then misapplied the concept of a "part" of a bill. For him, bills consist of ideas—not numbers, letters, words, or sentences. The ideas constitute the parts of a bill that will become law and "the governor must take the bill as he finds it: as a collection of proposed laws."[103] The partial veto is a power to reject ideas, not to refashion ideas or create new ideas.

Justice Kelly proposes a "constitutionally-grounded analysis" test, which reads: "After exercising the partial veto, the remaining part of the bill must not only be a 'complete, entire, and workable law,' it must also be a law on which the legislature actually voted; and the part of the bill not approved must be one of the proposed laws in the bill's col-

98. State ex rel. Wisconsin Senate v. Thompson, 144 Wis. 2d 429, 451–52, 424 N.W.2d 385 (1988); Citizens Utility Board v. Klauser, 194 Wis. 2d 484, 506, 534 N.W.2d 608 (1995).

99. 2020 WI 68, ¶¶ 10, 11.

100. 2020 WI 68, ¶¶ 10, 94.

101. Bartlett v. Evers, 2020 WI 68, ¶¶ 173, 180.

102. 2020 WI 68, ¶ 193.

103. 2020 WI 68, ¶ 217.

lection."[104] This means that the governor may partially veto in a bill only an entire idea that has been voted on by the legislature and included in the enrolled bill. The governor may not modify or amend the idea; instead, the governor's only option is to remove the idea from the bill. The idea is the constitutional work product of the lawmaking process, and the governor's partial veto power consists solely in the ability to remove an idea from an appropriation bill without having to veto the entire bill. Based on this notion, Justice Kelly adds an additional requirement to his test: "the part or parts of the bill that the governor did not approve must also comprise one or more 'complete, entire, and workable laws' that has passed the legislature."[105] Applying this test to the four vetoes, he finds that the parts in the bill that remained after the governor's vetoes were not ideas proposed by or passed by the legislature. Instead, the vetoed provisions were the governor's ideas. What is more, the parts removed from the bill did not consist of the legislature's proposed ideas or laws as they were originally presented in the enrolled bill.

Justice Brian Hagedorn, whose opinion was joined by Justice Annette Kingsland Ziegler, held that the school bus modernization grants, local road improvement grants, and vapor tax vetoes were unconstitutional, but upheld the vehicle registration fee veto. Unlike Justice Kelly, Justice Hagedorn does not believe that *Henry* is a problem in terms of the court's understanding of the word, "part," since *Henry* suggested there might well be substantive limitations on which parts of a bill the governor could not partially veto, namely provisos and conditions on appropriations.[106] Instead, his concern is with later decisions, especially *Kleczka*, and their claim that the governor may use the partial veto as an affirmative tool to create new policies not proposed or intended by the legislature.[107] To be sure, he shares with Justice Kelly the view that a bill "is not merely a collection of words, letters, and numbers that can be repurposed; it is a set of legislatively chosen policies."[108] These policies are the "ideas" contained in a bill.[109] Moreover, he shares the view that the governor's partial veto power is a negative power, consisting entirely in "the ability to negate, not create."[110] Finally, he shares the structuralist view that the governor may not "take the raw materials of a bill (words, letters, and numbers) and recast them to create a new policy not proposed and passed by the legislature."[111]

But there are differences. Justice Hagedorn accepts *Henry's* understanding of the original meaning of "part," with the result that a partial veto is not the same as an item veto and therefore the governor is not limited to just removing items from an appropriation

104. 2020 WI 68, ¶¶ 217, 220.

105. 2020 WI 68, ¶ 230.

106. 2020 WI 68, ¶ 248.

107. Justice Hagedorn specifically says that *Kleczka* "must be overruled." 2020 WI 68, ¶ 266.

108. Bartlett v. Evers, 2020 WI 68, ¶ 233.

109. 2020 WI 68, ¶ 241.

110. 2020 WI 68, ¶ 242.

111. 2020 WI 68, ¶ 244.

bill. Instead, the governor may remove parts of items, as it were. In practice, this means that the governor may veto parts of policies contained in a bill, subject to an important limit, which becomes Justice Hagedorn's partial veto test: "what the governor may not do is selectively edit parts of a bill to create a new policy that was not proposed by the legislature. He may negate separable proposals actually made, but he may not create new proposals not presented in the bill."[112] In other words, the governor may negate parts of a policy in a bill, but may not partially veto a policy to create a new one not passed by the legislature. For Justice Hagedorn, "the legislature must be the primary policymaker."[113] Applying this test, he finds that only the vehicle registration fee veto is constitutional. With that partial veto, the governor negated two of the registration fee changes in the bill and did not negate two other registration fee changes. In this way, the governor partially vetoed part of an idea or policy, but did not create a new one. The other three vetoes did not just negate the legislature's policies, but they created entirely new policies not passed by the legislature. For this reason, they were unconstitutional.

While no one opinion garnered a majority of justices, there are commonalities across the opinions of Chief Justice Roggensack and Justices Kelly and Hagedorn that may auger a new direction in partial veto jurisprudence. For one thing, the *Henry* "complete, entire, and workable law" test is no longer the sole determinant of a valid partial veto. Partial veto analysis does not end when the court determines that a veto results in a complete, entire, and workable law. At best, partial veto analysis begins only after the court determines that a partial veto has resulted in a complete, entire, and workable law. In this respect, the *Henry* test is no longer a sufficient condition for a valid partial veto, but is instead a necessary condition.

Moreover, the three opinions share an approach to examining legislation for purposes of partial veto analysis. For all three justices, a bill consists of either subjects or topics, ideas, or policies and not simply a string of words, numbers, or sentences. For this reason, the field of play on which partial veto jurisprudence now takes place is one consisting of concepts—that is, subjects or topics, ideas, or policies. From this new perspective, a bill is composed of discrete concepts bundled together. When the legislature presents an appropriation bill to the governor for approval, the governor may exercise the partial veto power only within the boundaries set by these concepts. Concepts expressed as proposed laws are the building blocks of a bill, not words and digits arranged on a page. The governor must work within the subjects or topics, ideas, or policies contained in the enrolled bill.

The main difference among the three justices is the latitude afforded the governor in using the partial veto within the boundaries of the subjects or topics, ideas, or policies. For Chief Justice Roggensack, the governor may partially veto words, numbers, and sen-

112. 2020 WI 68, ¶ 264.

113. 2020 WI 68, ¶ 244.

tences within a subject or topic so long as the subject or topic remains unchanged. If the governor does this, the governor may use the partial veto to create new law never passed by the legislature. For Justice Hagedorn, the governor may partially veto words, numbers, or sentences affecting a policy, but only if the effect is to negate the entire policy or parts of the policy passed by the legislature. In this respect, the text that remains in the bill after the partial veto is text that was passed by the legislature. For Justice Kelly, the governor may partially veto words, numbers, or sentences only to remove an entire idea from the bill. In this way, everything that remains in the bill after partial veto has been proposed and passed by the legislature. Thus, Chief Justice Roggensack affords the governor a degree of creativity in using the partial veto as long as the subject or topic is not altered; Justice Hagedorn allows the governor only to negate policies or parts of policies that the legislature has passed; and Justice Kelly limits the governor to removing from a bill only entire ideas and not their constituent parts.

Bartlett marks a new direction in partial veto jurisprudence. Partial vetoes that were constitutional before *Bartlett* were found unconstitutional. But *Bartlett's* future is uncertain, as its precedential value will depend on whether future courts accept the proposition that the complete, entire, and workable law test is not a sufficient condition for a valid partial veto, and on whether the governor's use of the partial veto is limited by the subjects or topics, ideas, or policies contained within a bill. Chief Justice Roggensack builds on the prior line of partial veto cases to narrow the governor's partial veto power. Justice Hagedorn would require that *Kleczka* be overturned. Justice Kelly would depart entirely from all prior partial veto case law to restore the partial veto to its proper place within Wisconsin's constitutional system. If *Bartlett* holds, the field of play for the governor to exercise the partial veto is considerably diminished and the power of the legislature to enact laws in the form proposed and passed by the legislature is increased. Future litigation is all but assured.

What are the types of partial vetoes?

Digit veto

Governor Patrick Lucey was the first governor to use the partial veto to remove a single digit from an appropriation bill—the "digit veto." In the 1973 biennial budget bill,[114] Governor Lucey reduced a $25 million highway bonding authorization to $5 million by striking the digit "2." Past governors had partially vetoed entire appropriation amounts, not individual digits in those amounts. The word "part" began to take on a literal meaning for purposes of article V, section 10 (1), of the Wisconsin Constitution covering every word and individual number on the pages of an appropriation bill.

All subsequent governors have used the digit veto to reduce state expenditure authority.

114. Ch. 90, Laws of 1973.

Editing veto

Governor Lucey continued his innovative use of the partial veto in the 1975 biennial budget bill,[115] vetoing 42 separate provisions in the bill, the largest number for a budget bill up to that time. One of the vetoed provisions authorized the expenditure of funds for tourism promotion. By partial veto, the governor vetoed the word "not" in the phrase "not less than 50%", thereby causing a 50 percent floor on cooperative advertising for tourism purposes to become a 50 percent ceiling. This was the first time a Wisconsin governor used the partial veto to expressly reverse the intent of the legislature.

In 1977, Acting Governor Martin J. Schreiber expanded the editing veto to enact a public policy that the legislature had expressly rejected. His partial veto of 1977 Assembly Bill 664[116] was the most controversial use of the partial veto to date. As passed by the legislature, Assembly Bill 664 had appropriated to the election campaign fund all moneys raised from a $1 voluntary add-on to a taxpayer's individual income tax bill. Acting Governor Schreiber's partial veto replaced the add-on with a checkoff, which meant that the $1 would be paid from the state's general fund rather than collected through individual tax returns. This was not just a policy reversal; it was a complete policy change, and was upheld in *Kleczka*.

All subsequent governors have used the editing veto.

Vanna White veto

In 1983, Governor Tony Earl applied the partial veto in a manner that came to be known as the "Vanna White" veto, named after a *Wheel of Fortune* television game show host, who flips letters to reveal word phrases. This kind of partial veto struck letters within words to create entirely new words. In this instance, the veto involved appeals of municipal waste disposal determinations to the Public Service Commission. As partially vetoed by Governor Earl, appeals would be sent to the courts instead of to the PSC. To make this change, Governor Earl partially vetoed a paragraph of five sentences containing 121 words into a new, one-sentence paragraph of 22 words.[117] The parts of an appropriation bill subject to veto were reduced to a collection of individual letters on the bill's pages.

Governor Tommy Thompson also used this type of partial veto to create entirely new words in bills during his first gubernatorial term. As discussed, in *Wisconsin Senate v. Tommy G. Thompson*, the court upheld Governor Thompson's use of the Vanna White veto on the 1987 biennial budget bill.[118] The June 1988 decision stated "Any claimed excesses on the part of the governor in the exercise of this broad partial veto authority

115. Ch. 39, Laws of 1975.

116. Ch. 107, Laws of 1977, sections 51 and 53.

117. 1983 Wis. Act 27, section 1553p.

118. 1987 Wis. SB 100.

are correctable not by this court, but by the people, either at the ballot box or by constitutional amendment."[119]

Fewer than three weeks after the ruling, the legislature, with both houses controlled by the Democrats, held a one-day extraordinary session to adopt 1987 Senate Joint Resolution 71. The joint resolution proposed amending article V, section 10, of the Wisconsin Constitution, to specify that in approving an appropriation bill in part, the governor may not create a new word by striking individual letters in the words of the enrolled bill. The 1989 legislature approved the proposal on second consideration as 1989 Senate Joint Resolution 11, and on April 3, 1990, voters approved the measure by a two to one margin, officially eliminating the Vanna White veto.[120] While Governor Thompson lamented the passage of the amendment, stating that governors need "as many arrows in their quiver" as possible, Assembly Speaker Tom Loftus called the amendment "a step in the right direction" with a reaffirmation that, in the American system of lawmaking, the people do not think "Governors should have the power to make law."[121]

Write-down veto

Governor Thompson employed the partial veto power more than any other governor, using the digit, editing, and Vanna White vetoes. His most significant innovation in expanding the partial veto power, however, was the "write-down" veto. In a write-down veto, the governor reduces an appropriation amount by striking the appropriation amount and then writing down a lower amount, so as to create an entirely new number with potentially entirely different digits. In his partial veto of the 1993 biennial budget bill,[122] Governor Thompson struck dollar amounts in nine instances and replaced them with lower amounts. But there were limits to the write-down veto. In the 1997 biennial budget bill,[123] Governor Thompson used the partial veto to write down a lower bonding authorization amount, but the court, in *Risser v. Klauser*, held that the governor could partially veto only appropriations with a write-down veto, not any other amounts.

Frankenstein veto

Governors Tommy Thompson, Scott McCallum, and James Doyle aggressively used a type of editing veto in ways unimagined by their predecessors, altering appropriation bills not only to change the intent of bills passed by the legislature but also to embark on entirely new policy directions that had not even been considered by the legislature.

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119. State ex rel. Wisconsin Senate v. Thompson, 144 Wis. 2d 429, 465, 424 N.W.2d 385 (1988).

120. Wis. Const. art. V, § 10 (1) (c) (April 1990). The measure passed by a vote of 387,068 to 252,481. Vanna White herself sent Rep. Dave Travis, a lead author of the amendment, an autographed picture to commemorate its passage. "Vanna takes note of veto bill," *Capital Times*, April 30, 1990.

121. 1993 Wis. Act 16.

122. 1997 Wis. Act 27.

123. 1993 Wis. Act 16.

For example, in the 2005 biennial budget,[124] Governor Doyle pieced together 20 words within 752 words to create a new sentence that allowed $427 million to be transferred from the transportation fund to the general fund, which was then used to fund the operation of public schools.[125] This practice of using the partial veto to create a new sentence by combining parts of two or more sentences, and sometimes unrelated sentences, was dubbed the "Frankenstein veto."

Largely in response to Governor Doyle's aggressive use of the editing veto in the 2005 biennial budget, the 2005 legislature, in a bipartisan vote, adopted 2005 Senate Joint Resolution 33, which proposed amending the constitution to ban the Frankenstein veto. Specifically, the amendment would prohibit the governor from creating "a new sentence by combining parts of two or more sentences of the enrolled bill."[126] The 2007 legislature adopted the proposal on second consideration almost unanimously, and in April 2008, 71 percent of voters approved the amendment.[127]

As a result of the amendment, the governor can no longer create a new sentence from other sentences. However, the governor can still use the editing veto to remove entire sentences or words within sentences, even if doing so changes the meaning of a paragraph or sentence. Days after the adoption of the 2008 amendment, the *Capital Times* published an editorial stating that "governors of Wisconsin retain the most abusive veto powers in the nation. And do not doubt that the abuses will continue . . . A cutesy campaign has led people to believe the 'Frankenstein' veto has been slain. But that is not the case."[128]

When and how can the governor partially veto a bill?

Before *Bartlett*, Wisconsin case law on the partial veto provided fairly clear direction on when the governor could partially veto a bill, how the governor could partially veto a bill, and what the test was for determining the validity of the partial veto.

First, the governor could partially veto only a bill that appropriates moneys. The *Finnegan* test, as affirmed by *Risser v. Klauser*, held that an appropriation involves the expenditure or setting aside of public moneys for a particular purpose and an appropriation must specifically determine "the amount, manner, and purpose, of the various items of expenditure."[129] A bill that raises revenue, even if it increases expenditures, is not an appropriation bill if the revenues are deposited into an existing continuing appropriation. Similarly, a provision in a bill setting bonding limits is not an appropriation, even if the bonding levels affect expenditures from current law appropriations. The courts were

124. 2005 Wis. Act 25.

125. 2005 Wis. Act 25, section 9148 (4f)

126. Wis. Const. art. V, § 10 (1) (c) (April 2008).

127. The measure passed in a 575,582 to 239,613 vote.

128. "Sham veto amendment not reform," *Capital Times*, April 6, 2008.

129. 220 Wis. 134, 148 (1936).

consistent in this regard. A bill is not an appropriation bill if it has an "indirect bearing upon the appropriation of public moneys"[130] or tangentially "affects an appropriation."[131] An appropriation bill must "within its four corners contain an appropriation."[132] This is a clear rule. The best way to determine if a bill is an appropriation bill is if the bill creates or authorizes the expenditure of moneys from a chapter 20 appropriation provision.

Second, if the bill was an appropriation bill, the governor could veto any word in the bill, including action phrases and bill section titles; could veto any digit in the bill, including striking a "0" from a number to reduce, say, $1,000,000 to $100,000; and could reduce any appropriation amount by writing in a lower amount. But there were limits. No governor had ever partially vetoed current law text or numbers in an appropriation bill. (Current law appears in a bill if the bill deletes or adds language to current law to show how current law is affected.)[133] Instead, the governor could partially veto only newly created or amended text or numbers that appear in a bill. The 1990 amendment prohibited the governor from striking letters to form new words. In addition, the 2008 amendment curtailed significantly the governor's partial veto power by prohibiting the governor from creating "a new sentence by combining parts of 2 or more sentences of the enrolled bill."[134] As a result, the governor could veto only new words or numbers within a sentence or could veto new sentences in a bill but could not link the words or numbers across sentences to form a new sentence.

Finally, even if the governor had followed the above-mentioned procedures, there were two other requirements for determining whether a partial veto was valid. One was the *Henry* requirement that a partial veto must result in a "complete, entire, and workable law." There was no court test for what constituted a complete, entire, and workable law. The issue therefore had to be determined on a case-by-case basis, but the court had advised that the language that remained after a partial veto did not have to be grammatically correct or even have proper syntax, nor that it be perfectly clear. In fact, under *Wisconsin Senate*, a vague law resulting from a partial veto could still be complete, entire, and workable.[135] The other requirement was that the part of the bill that remained after a partial veto must be germane to the part that was vetoed. This limited the ability of a governor to strike just any word in a sentence. Importantly, the court had never applied this test, but noted that it had "the force of law."[136]

After *Bartlett*, the governor may still partially veto only a bill that appropriates mon-

130. 220 Wis. 134, 148 (1936).

131. 207 Wis. 2d 176, 196 (1997).

132. 220 Wis. 134, 147 (1936).

133. Joint Rule 52 (5) requires that the full text of amended provisions in current law be displayed in bills.

134. Wis. Const. art. V, § 10 (1) (c) (April 2008).

135. State ex rel. Wisconsin Senate v. Thompson, 144 Wis. 2d 429, 462–63, 424 N.W.2d 385 (1988).

136. 144 Wis. 2d 429, 452–53.

ey and a valid partial veto must result in a complete, entire, and workable law. The 1990 and 2008 constitutional amendment limitations also still apply. But the parts of an appropriation bill subject to partial veto are less clear. Three of Governor Evers's partial vetoes to 2019 Wisconsin Act 9 were found unconstitutional, yet for different reasons. Chief Justice Roggensack's germaneness or topicality test is the least restrictive of the three tests offered by the justices who found some of the partial vetoes unconstitutional. She advances a germaneness test, like the one in *Wisconsin Senate*, but hers is a *strict* germaneness test: a valid partial veto "must not alter the topic or subject matter of the 'whole' bill before the veto."[137] If the topic or subject of the idea initiating the bill is altered, the veto is invalid.

A partial veto that does not survive Chief Justice Roggensack's strict germaneness test would also likely not survive Justices Kelly's and Hagedorn's more restrictive partial veto tests. Their partial veto tests would limit the governor to removing only entire policies or, at most, negating parts of policies, but the text remaining in the vetoed bill must have been passed by the legislature. In a backhanded way, these two tests contain a strict germaneness requirement of their own: if the governor may partially veto only an entire policy or negate only part of a policy, the partial veto must necessarily be germane since the veto will not result in a new subject or topic. Therefore, at the very least, germaneness may acquire enhanced importance in partial veto jurisprudence. If this is so, the governor may partially veto words and digits, as well as write in new appropriations numbers, so long as the topic or subject of the bill is not altered. That said, as Justice Hagedorn noted, "future litigation will surely provide opportunities to refine the analysis."[138]

Partial veto rules

Together, court decisions, past practices of governors, and legal advice of Legislative Reference Bureau attorneys have produced a set of rules to guide governors in their exercise of the partial veto power on appropriation bills. The rules are as follows:

1. A veto of stricken text restores current law.
2. A veto of plain text or scored text wipes out the text.
3. The governor may not veto current law.
4. The governor may veto individual digits but may not create new words by rejecting individual letters.
5. The governor may not create a new sentence by combining parts of two or more sentences.
6. The governor may reduce the amount of an appropriation by writing in a smaller

137. Bartlett v. Evers, 2020 WI 68, ¶¶ 10, 11.

138. 2020 WI 68, ¶ 264.

amount, but may not reduce other numbers, such as bonding authorizations, by a write-down veto.

7. A partial veto must leave a "complete, entire, and workable law."
8. The law that remains after vetoed provisions are removed must be germane to the topic of the vetoed provisions. After *Bartlett*, this germaneness rule is stronger and more likely to restrict the governor's partial veto power. A partial veto may not alter the topic or subject of the enrolled bill.

The past and future of the governor's partial veto power

The Wisconsin Constitution establishes a framework in which the different branches of government are assigned not only separate powers, but also shared powers. The partial veto power gives the governor a role in the lawmaking process by granting the governor the power to reject legislation in its entirety. The partial veto power gives the governor an even more important role in the lawmaking process by allowing the governor the ability to approve legislation that may be required for the operation of state government, but also to reject parts of that legislation that the governor objects to on policy or fiscal grounds. In this way, governors are not forced to accept or reject in its entirety legislation that funds state government operations and programs. Instead, the partial veto enables the governor to pick and choose, as it were, the proper level of funding for state government operations and programs, as well as alter the operations and programs themselves. This shared role in the lawmaking process is an invitation for conflict.

The evolution of the partial veto is marked by three key trends. First, the courts reimagined the partial veto in ways not intended by the legislature. By all accounts, the legislature created the partial veto to be similar to, if not the same as, the item veto possessed by a large majority of states. In its early cases, however, the court distinguished the partial veto from the item veto and held that item veto jurisprudence from other states would not define the boundaries of the partial veto. The partial veto was unique to Wisconsin. Judicial interpretation of the partial veto power accommodated the governor, as the court over the span of six decades read the partial veto to allow the governor to reject any text, digits, and punctuation in an appropriation bill, including the very letters in the words themselves. There is no evidence that the partial veto power was originally intended to allow the governor to fashion new words or sentences or to embark on new policy directions not intended by the legislature. The partial veto was intended to be a check on the legislature, not a means for the governor to rewrite legislation. The partial veto evolved with court assistance to become a powerful, policymaking instrument.

Second, governors used the partial veto to expand their role in the lawmaking process. They did this incrementally, however. They initially vetoed non-appropriation text in appropriation bills and then tried to partially veto bills that were not appropriation

bills. Governors struck words in appropriation bills to reject policy choices of the legislature and then strategically removed words to create new policies, either not intended or that were expressly rejected by the legislature. Governors grew more creative with the partial veto. In the 1930s, governors partially vetoed paragraphs and individual sentences; in the 1960s, governors partially vetoed parts of sentences and figures; and then in the 1980s, governors partially vetoed individual letters in words. The frequency of partial vetoes also increased, as shown in table 1. The partial veto was seldom used by the governor from the mid-1930s until the late 1960s. But beginning in the early 1970s, governors increased their deployment of the partial veto to the point where it is now expected that the governor will partially veto appropriation bills to accomplish policy or fiscal goals. Governors reinvented the partial veto to become a policymaking tool, limited only by the words and numbers on the pages of an appropriation bill and the creative imagination of the governor to fashion new law.

Finally, the legislature contested the governor's use of the partial veto power when its exercise gave the governor too intrusive of a role in the lawmaking process. Legislators challenged the constitutionality of the Vanna White and write-down partial vetoes. Although legislators were not successful in convincing the court to eliminate the Vanna White veto, they were able to limit the governor's write-down partial veto power. The 1990 and 2008 constitutional amendments are also examples of when the legislature fought back. As noted earlier, the 1990 amendment was a quick response to Governors Earl and Thompson and their partially vetoing letters in words to create new words, especially when the court in 1988 upheld this practice. The 2008 amendment was a reaction to Governor Doyle's aggressive use of the partial veto in the 2005 biennial budget bill. The history of the partial veto shows that the legislature will respond to the governor.

Litigation and the constitutional amendment process are two ways the legislature can limit the reach of the partial veto. But the success of these routes depends on convincing outside actors—the courts and the public—of the wisdom of containing the governor's partial veto power. In *Bartlett*, the legislature submitted an amicus curiae brief arguing that the governor had exceeded his partial veto authority, and presented its position in oral argument. A divided court agreed, at least on three of the four vetoes. But the future of *Bartlett* is unclear, given that there was no opinion that garnered the support of a majority of justices. Supreme court turnover and the governor's ability to fashion new types of partial vetoes may also affect the vitality of *Bartlett*. Importantly, there is another way for the legislature to rein in the partial veto, a way entirely under its own control, and that is to limit inclusion of non-appropriation text in appropriation bills. The constitution gives the governor partial veto power over appropriation bills, but the constitution also gives the legislature the power to decide what is included in an appropriation bill. The legislature could choose to keep policy items out of appropriation bills.

In fact, courts have advised the legislature to do this. In *Risser v. Thompson*, the only federal appellate decision on the partial veto, the court noted that "it is true that the present governor frequently exercises his partial veto power on nonappropriation items." But the court observed that this "is because the legislature chooses . . . to attach substantive provisions as riders to the omnibus appropriation bill." The court continued: "If the legislature stops doing this, the governor's 'creative' veto power will be limited to appropriations matters."[139] This advice was also tendered in *Wisconsin Senate* as a way to limit the governor's partial veto power. As the court put it, "the solution is obvious and simple: Keep the legislature's internally generated initiatives out of the budget bill."[140] ■

139. Risser v. Thompson, 930 F.2d 549, 552 (1991).

140. State ex rel. Wisconsin Senate v. Thompson, 144 Wis. 2d 429, 464, 424 N.W.2d 385 (1988).

Appendix

Table 1. **Partial vetoes in executive budget bills**

Session	Bill	Law	Number of items vetoed[1]	Senate/Assembly Journal reference
1931	AB 107	Ch. 67	12	AJ p. 1134
1933	SB 64	Ch. 140	12	SJ p. 1195
1935	AB 17	Ch. 535	0	—
1937	AB 74	Ch. 181	0	—
1939	AB 194	Ch. 142	1	AJ p. 1462
1941	AB 35	Ch. 49	1	AJ p. 770
1943	AB 61	Ch. 132	0	—
1945	AB 1	Ch. 293	1	AJ p. 1383
1947	AB 198	Ch. 332	1	AJ p. 1653
1949	AB 24	Ch. 360	0	—
1951	AB 174	Ch. 319	0	—
1953	AB 139	Ch. 251	2	AJ p. 1419
1955	AB 73	Ch. 204	0	—
1957	AB 77	Ch. 259	2	AJ p. 2088
1959	AB 106	Ch. 135	0	—
1961	AB 111	Ch. 191	2	AJ p. 1461
1963	SB 615	Ch. 224	0	—
1965	AB 903	Ch. 163	1	AJ p. 1902
1967	AB 99	Ch. 43	0	—
1969	SB 95	Ch. 154	27	SJ p. 2615
1971	SB 805	Ch. 125	12[2]	SJ p. 2162
	AB 1610	Ch. 215	8	AJ p. 4529
1973	AB 300	Ch. 90	38	AJ p. 2409
	AB 1[3]	Ch. 333	19	AJ p. 310
1975	AB 222	Ch. 39	42	AJ p. 1521
	SB 755	Ch. 224	31	SJ p. 2257
1977	SB 77	Ch. 29	67	SJ p. 853
	AB 1220	Ch. 418	44	AJ p. 4345
1979	SB 79	Ch. 34	45	SJ p. 617
	AB 1180	Ch. 221	58	AJ p. 3421
1981	AB 66	Ch. 20	121	AJ p. 895
	SB 1[4]	Ch. 93	10	SJ p. 1196
	SB 783	Ch. 317	23	SJ p. 2085
1983	SB 83	Act 27	70	SJ p. 276
	SB 663	Act 212	1	SJ p. 585

Table 1. **Partial vetoes in executive budget bills,** continued

Session	Bill	Law	Number of items vetoed[1]	Senate/Assembly Journal reference
1985	AB 85	Act 29	78	AJ p. 296
	SB 1[5]	Act 120	1	SJ p. 585
1987	SB 100	Act 27	290	SJ p. 277
	AB 850	Act 399	118	AJ p. 1052
1989	SB 31	Act 31	208	SJ p. 325
	SB 542	Act 336	73	SJ p. 966
1991	AB 91	Act 39	457	AJ p. 404
	SB 483	Act 269	161	SJ p. 896
1993	SB 44	Act 16	78	SJ p. 362
	AB 1126	Act 437	11	AJ p. 960
1995	AB 150	Act 27	112	AJ p. 383
	AB 557	Act 113	11	AJ p. 689
	SB 565	Act 216	3	SJ p. 770
1997	AB 100	Act 27	152	AJ p. 322
	AB 768	Act 237	22	AJ p. 927
1999	AB 133	Act 9	255	AJ p. 405
2001	SB 55	Act 16	315	SJ p. 282
	AB 1[6]	Act 109	72	AJ p. 894
2003	SB 1	Act 1	0	—
	SB 44	Act 33	131	SJ p. 277
2005	AB 100	Act 25	139	AJ p. 374
2007	SB 40	Act 20	33	SJ p. 373
	AB 1[7]	Act 226	8	AJ p. 792
2009	SB 62	Act 2	0	—
	AB 75	Act 28	81	AJ p. 298
2011	AB 11[8]	Act 10	0	—
	SB 12[8]	Act 13	0	—
	AB 148	Act 27	0	—
	AB 40	Act 32	50	AJ p. 413
2013	AB 40	Act 20	57	AJ p. 253
2015	SB 21	Act 55	104	SJ p. 329
2017	AB 64	Act 59	98	AJ p. 421
2019	AB 56	Act 9	78	AJ p. 216

Note: This table includes biennial budget acts, budget review acts, budget adjustment acts, annual budget acts, and the 1995 transportation budget act. AJ: Assembly Journal; SJ: Senate Journal.

1. As listed in the governor's veto message. 2. Numerous "technical changes" made by the governor are counted as one partial veto. 3. April 1974 Special Session. 4. November 1981 Special Session. 5. January 1986 Special Session. 6. January 2002 Special Session. 7. March 2008 Special Session. 8. January 2011 Special Session.

Source: Senate and Assembly Journals.

Table 2. **Executive partial vetoes**

	Bills		Biennial budget bills	
Session	Partially vetoed	With veto overrides	Partial vetoes[1]	Vetoes overridden
1931	2	—	12	—
1933	1	—	12	—
1935	4	—	—	—
1937	1	—	—	—
1939	4	—	1	—
1941	1	—	1	—
1943	1	1	—	—
1945	2	1	1	—
1947	1	—	1	—
1949	2	1	—	—
1951	—	—	—	—
1953	4[2]	—	2	—
1955	—	—	—	—
1957	3	—	2	—
1959	1	—	—	—
1961	3	—	2	—
1963	1	—	—	—
1965	4	—	1	—
1967	5	—	—	—
1969	11	—	27	—
1971	8	—	12[3]	—
1973	18	3	38	2
1975	22	4	42	5
1977	16	3	67	21
1979	9	2	45	1
1981	11	1	121[4]	—
1983	11	1	70	6
1985	7	1	78	2
1987	20	—	290	—
1989	28	—	208	—
1991	13	—	457	—
1993	24	—	78	—
1995	21	—	112	—
1997	8	—	152	—
1999	10	—	255	—

Table 2. **Executive partial vetoes,** continued

Session	Bills		Biennial budget bills	
	Partially vetoed	With veto overrides	Partial vetoes[1]	Vetoes overridden
2001	3	—	315	—
2003	10	—	131	—
2005	2	—	139	—
2007	4	—	33	—
2009	5	—	81	—
2011	3	—	50	—
2013	4	—	57	—
2015	5	—	104	—
2017	4	—	98	—
2019	2	—	78	—

Note: The legislature is not required to act on vetoes. Any veto not acted upon is counted as sustained, including pocket vetoes. "Vetoes sustained" includes the following pocket vetoes: 1937 (5); 1941 (13); 1943 (4); 1951 (14); 1955 (10); 1957 (1); 1973 (1). A "pocket veto" resulted if the governor took no action on a bill after the legislature had adjourned sine die. (Sine die, from the Latin for "without a day," means the legislature adjourns without setting a date to reconvene.) With this type of adjournment, the legislature concluded all its business for the biennium, and there was no opportunity for it to sustain or override the veto (see article V, section 10, of the Wisconsin Constitution). Under current legislative session schedules, in which the legislature usually adjourns on the final day of its existence, just hours before the newly elected legislature is seated, the pocket veto is unlikely.

—represents zero

1. As listed in the governor's veto message. 2. 1953 AB 141, partially vetoed in two separate sections by separate veto messages, is counted as one. 3. Numerous "technical changes" made by the governor are counted as one partial veto. 4. Attorney general ruled several vetoes "ineffective" because the governor failed to express his objections (see Opinions of the Attorney General, 70, 189).

Source: Senate and Assembly Journals.

Table 3. **Legislative proposals to amend the partial veto**

Session	Joint resolution	Subject	Final disposition
1935	AJR 170	Limit governor's partial veto to the "appropriation item(s)" in appropriation bills. (1st Consideration)	Failed to pass.
1941	AJR 71	Permit governor to disapprove or reduce items or parts of items in any bill appropriating money. (1st Consideration)	Failed to pass.
1961	AJR 130	Require that portions of appropriation bill to which the governor objects be returned to legislature for possible repassing on majority vote of both houses. If passed again and rejected by governor a second time, veto procedure would then apply. (1st Consideration)	Failed to pass.
1969	AJR 9	Require only majority approval to override a partial veto in instances where vetoed part did not include an appropriation. (1st Consideration)	Failed to pass.

Table 3. **Legislative proposals to amend the partial veto,** continued

Session	Joint resolution	Subject	Final disposition
1969 (cont.)	AJR 56	Limit governor's partial veto authority to disapproval or reduction of an appropriation. (1st Consideration)	Failed to pass.
1973	SJR 123	Remove governor's authority to partially veto appropriation bills. (1st Consideration)	Failed to pass.
1975	SJR 46	Remove governor's authority to partially veto appropriation bills. (1st Consideration)	Failed to pass.
	AJR 61	Same as SJR 46. (1st Consideration)	Failed to pass.
	AJR 74	Limit governor's partial veto authority to appropriation paragraphs or amounts. (1st Consideration)	Failed to pass.
1977	SJR 46	Limit governor's partial veto authority to complete dollar amounts or to a numbered segment of law as identified in a bill. Partial veto can be overridden by majority vote in both houses. (1st Consideration)	Failed to pass.
1979	SJR 7 (Enrolled JR 42)	Limit governor's partial veto power by requiring that the part vetoed "would have been capable of separate enactment as a complete and workable bill," but, regardless of that limit, governor may veto any complete dollar amount. (1st Consideration)	Passed Senate (28–1); Assembly (74–24).
	SJR 16	Limit governor's partial veto authority to whole sections only. (1st Consideration)	Failed to pass.
1981	SJR 4	Second consideration of content of 1979 Enrolled Joint Resolution 42.	Passed Senate (17–15); failed Assembly (54–42).
1983	SJR 16	Same as 1977 SJR 46. (1st Consideration)	Failed to pass.
1987	SJR 71 (Enrolled JR 76)	Prevent governor from creating "a new word by rejecting individual letters in the words of the enrolled bill." (1st Consideration)	Passed Senate (18–14); Assembly (55–35–2).
1989	SJR 11 (Enrolled JR 39)	Second consideration of content of 1987 Enrolled Joint Resolution 76.	Passed Senate (22–11); Assembly (64–32–2). Voters approved on April 3, 1990 (387,068–252,481).
1991	SJR 85	Limit governor's partial veto power to "item(s)" and require that the remainder of the bill constitute "a complete and workable law" that is "germane to the subject of the legislative enactment." (1st Consideration)	Failed to pass.

Table 3. **Legislative proposals to amend the partial veto,** continued

Session	Joint resolution	Subject	Final disposition
1991 (cont.)	AJR 78	Prevent governor from creating a new sentence by combining parts of two or more sentences in enrolled bill. (1st Consideration)	Failed to pass.
	AJR 130 (Enrolled JR 16)	Limit governor's partial veto power to "item(s)" and require that the remainder of the bill constitute "a complete and workable law" that is "germane to the subject of the legislative enactment." (1st Consideration)	Passed Assembly (58–40); Senate (17–15).
1993	AJR 34	Second consideration of content of 1991 Enrolled Joint Resolution 16.	Failed to pass.
1999	AJR 119	Limit governor's partial veto power by requiring that the veto keeps the proposal as a "workable bill" or is a complete dollar amount as shown in the bill. (1st Consideration)	Failed to pass.
2003	AJR 77	Prevent governor from increasing the dollar amount of an appropriation and from approving any law that the legislature did not authorize as part of the enrolled bill. (1st Consideration)	Failed to pass.
2005	SJR 33 (Enrolled JR 46)	Prevent governor from creating new sentences by combing parts of two or more sentences of the enrolled bill. (1st Consideration)	Passed Senate (23–10); Assembly (72–24–2).
	AJR 52	Same as 2005 SJR 33.	Failed to pass.
	SJR 35	Provide that the people may approve or reject full or partial gubernatorial vetoes by referendum. (1st Consideration)	Failed to pass.
	AJR 68 (Enrolled JR 40)	Prevent governor from partially vetoing parts of a bill section without rejecting the entire bill section. (1st Consideration)	Passed Assembly (74–25); Senate (20–12).
2007	SJR 5 (Enrolled JR 26)	Second consideration of Enrolled Joint Resolution 46.	Passed Senate (33–0); Assembly (94–1). Voters approved on April 1, 2008 (575,582–239,613).
	AJR 1	Second consideration of Enrolled Joint Resolution 46.	Passed Assembly (70–25–2); Senate failed to concur.
2009	SJR 61 (Enrolled JR 40)	Prevent governor from partially vetoing parts of a bill section without rejecting the entire bill section. (1st Consideration)	Passed Senate (21–12); Assembly (50–48).
	AJR 109	Same as 2009 SJR 61.	Failed to pass.
2009 (cont.)	AJR 129	Prevent governor from creating new sentences by combining parts of sentences. (1st Consideration)	Failed to pass.

Table 3. **Legislative proposals to amend the partial veto,** continued

Session	Joint resolution	Subject	Final disposition
2011	AJR 114	Second consideration of content of 2009 Enrolled Joint Resolution 40.	Failed to pass.
	SJR 60	Second consideration of content of 2009 Enrolled Joint Resolution 40.	Failed to pass.
2013	AJR 124	Prevent governor from partially vetoing parts of bill sections without rejecting the entire bill section. (1st Consideration)	Failed to pass.
2019	SJR 59	Prohibit governor from using partial veto to increase state expenditures. (1st Consideration)	Passed Senate (19–14); Assembly failed to concur.
	AJR 108	Same as SJR 59.	Failed to pass.

Source: Senate and Assembly Journals.