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Repository Citation

Mattingly, Mack, "Law Day 1985" (1985). *Law Day Lectures*. 22.
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Rodriguez

SENATOR MACK MATTINGLY

REMARKS

UNIVERSITY OF GEORGIA

LAW DAY

APRIL 20, 1985

DEAN BEAIRD, MEMBERS OF THE LEGISLATURE, STUDENTS, FACULTY AND ALUMNI OF THE UNIVERSITY OF GEORGIA LAW SCHOOL AND GUESTS: IT IS AN HONOR, ESPECIALLY FOR A LAYMAN, TO ADDRESS SUCH A DISTINGUISHED AUDIENCE OF JURISTS AND LEGAL SCHOLARS. AND IT IS A SPECIAL HONOR TO BE WITH YOU TODAY DURING THIS YEAR'S 200TH ANNIVERSARY OF THE UNIVERSITY OF GEORGIA'S CHARTER, THE 126TH ANNIVERSARY OF THIS LAW SCHOOL, AND THE 27TH OBSERVANCE OF LAW DAY IN OUR COUNTRY.

UNIVERSITY OF

I FIRST CAME TO GEORGIA ABOUT 30 YEARS AGO. I WAS STATIONED JUST OUTSIDE OF SAVANNAH AS A MEMBER OF THE UNITED STATES AIR FORCE. AS MANY OF YOU KNOW, THAT AREA OF GEORGIA, THE LOW COUNTRY, HAS A PARTICULAR CHARM AND BEAUTY. I DECIDED THEN IT WAS THE KIND OF PLACE I WANTED TO LIVE AND TO RAISE A FAMILY. AND SO I DID.

THERE IS ANOTHER ASPECT ABOUT GEORGIA'S COASTAL REGION THAT HAS ALWAYS APPEALED TO ME: ITS DEEP AND RICH HISTORY. AS YOU KNOW, THE COLONY OF GEORGIA WAS SETTLED BY REFUGEES FROM THE TYRANNY AND POVERTY OF THE BRITISH SYSTEM. THEY ARRIVED ON THE GEORGIA COAST WITH GENERAL OGELTHORPE AND SET ABOUT MAKING A NEW LIFE. ONE OF THE FIRST THINGS THEY DID WAS TO DRAW UP A CHARTER FOR THE NEW COLONY. THE DOCUMENT BANNED THREE THINGS: SLAVES, RUM, AND BARRISTERS. LAWYERS, THEY WROTE, MADE THE GOOD APPEAR BAD; THE BLACK APPEAR WHITE.

THE IRONY OF THAT FIRST ACT IS THAT THOSE SETTLERS SHORTLY JOINED WITH THE OTHER SETTLERS OF AMERICA'S ATLANTIC COAST TO FORGE THE GREATEST NATION BASED ON LAW THE WORLD HAS EVER KNOWN. THE COLONISTS LEARNED THAT LAW DOES NOT HAVE TO BE THE STATIC SWORD OF THE STATUS QUO THAT THEY HAD KNOWN UNDER MONARCHY. THEY LEARNED THAT A DEMOCRACY BASED ON A LIVING, BREATHING LAW--THE CONSTITUTION--COULD BE THE SOURCE OF THE GREATEST FREEDOM, OPPORTUNITY AND HOPE MANKIND HAS YET CONCEIVED.

I AM A BUSINESSMAN. I HAVE SPENT ALL MY LIFE IN BUSINESS. EXCEPT FOR THE LAST FOUR YEARS AND FOUR MONTHS. DURING THAT TIME I HAVE SERVED IN THE UNITED STATES SENATE MAKING LAW, AND ALSO WORKING TO KEEP SOME LAW FROM BEING MADE. I AM SURE THERE ARE SOME LAWYERS HERE WHO DO NOT EXPECT A BUSINESSMAN TO MAKE GOOD

4

LAW. BUT ANOTHER FORMER BUSINESSMAN, THOMAS JEFFERSON, SAID ABOUT ONE OF THE FIRST CONGRESSES, "THAT ONE HUNDRED AND FIFTY LAWYERS SHOULD DO BUSINESS TOGETHER, OUGHT NOT TO BE EXPECTED."

AFTER SERVING TWO-THIRDS OF MY FIRST TERM, I AM IN AGREEMENT WITH THE LAWYER OLIVER WENDELL HOLMES REGARDING THE "LEGISLATIVE BUSINESS OF THE SENATE. "THE LIFE OF THE LAW," HE SAID, "HAS NOT BEEN LOGIC, IT HAS BEEN EXPERIENCE."

I BECAME INVOLVED IN THE POLITICAL ARENA AND ULTIMATELY ELECTED OFFICE BECAUSE OF MY EXPERIENCE IN BUSINESS. THAT EXPERIENCE, ESPECIALLY DURING THE TWO DECADES OF THE 1960'S AND 1970'S, WAS THAT AN INDIVIDUAL ATTEMPTING TO START A BUSINESS OR EXPAND A BUSINESS FACED AN INCREASING LOSS OF OPPORTUNITY, OF REWARD, OF FREEDOM TO DO SO. OPERATING MY OWN SMALL BUSINESS,

EMPLOYING PEOPLE, FILLING OUT FORMS, PAYING TAXES, PAYING INTEREST ON OPERATING LOANS, PAYING COST OF LIVING INCREASES, IT BECAME APPARENT THAT GOVERNMENT THREATENED THE VERY HEART AND SOUL OF FREE ENTERPRISE; THE MARGINAL INCENTIVE, THE REWARD, THE PROFIT BY WHICH AN INDIVIDUAL PROVIDES FOR FAMILY, THE FUTURE OF CHILDREN, THE BETTERMENT OF COMMUNITY AND, FINALLY, THE GROWTH AND ADVANCEMENT OF THE GENERAL ECONOMIC WELFARE.

THE PROBLEM FROM THE PERSPECTIVE OF THE PRIVATE SECTOR APPEARED TO BE SIMPLY AN EXCESS OF GOVERNMENT. A PENETRATION OF GOVERNMENT INTO THE DOMAIN OF THE PRIVATE SECTOR, THAT LIKE AN UNCHECKED GROWTH OF PARASITE IN A GARDEN, THREATENED TO DESTROY THE VERY FRUIT ON WHICH IT IS SUSTAINED IN THE FIRST PLACE.

FROM THE PERSPECTIVE OF THE UNITED STATES SENATE, THE PROBLEM APPEARS EVEN MORE BASIC: AN EXCESS OF LEGISLATION DURING TWO DECADES THAT THREATENS THE BALANCE OF THE CONSTITUTIONAL SYSTEM ON WHICH THE WHOLE LAWMAKING PROCESS IS SUSTAINED, ESPECIALLY AS THAT PROCESS ALLOWS FOR THE PRIORITIZING OF FEDERAL ACTIVITY.

WE HAVE REACHED A POINT IN OUR HISTORY WHERE GOVERNMENT ACTIVITY CAN NOT CONTINUE TO GROW ARBITRARILY AS A PERCENTAGE OF GROSS NATIONAL PRODUCT--WHICH IS NOTHING MORE THAN THE COMBINED ENTERPRISE OF THE AMERICAN PEOPLE--WITHOUT AFFECTING THE VERY NATURE OF THAT ENTERPRISE. PRIORITIES MUST BE SET. CHOICES MUST BE MADE. ARE THIS ACTIVITY AND ITS COST NECESSARY? IF SO, WHAT ACTIVITY AND SPENDING ARE NOT SO NECESSARY? BUT TO SET PRIORITIES, TO MAKE CHOICES IN A CONSTITUTIONAL SYSTEM, THE PROPER TOOLS HAVE TO EXIST. BECAUSE OF THE LEGISLATION OF THE LAST 20 YEARS, BECAUSE OF THE GROWTH OF THE GOVERNMENT AS A

PERCENTAGE OF GNP, THE OLD TOOLS AS ENVISIONED BY THE FRAMERS OF
THE CONSTITUTION HAVE BEEN CORRUPTED. NEW TOOLS ARE NEEDED.

WHEN I CAME TO THE SENATE THE FEDERAL BUDGET WAS 656 BILLION
DOLLARS. THIS YEAR IT WILL APPROACH ONE TRILLION DOLLARS. THAT
IS A HUGE JUMP IN SPENDING. BUT THE BUDGET WAS GROWING AT AN
EVEN FASTER RATE DURING THE 1970'S. AND MUCH OF THAT SPENDING IS
AND WAS DEFICIT. FACED WITH THE NEED TO MAKE CHOICES AND TO
REDUCE DEFICITS, CONGRESS HAS CONSIDERED A NUMBER OF TOOLS. A
CONSTITUTIONAL AMENDMENT TO BALANCE THE BUDGET. LEGISLATION TO
LIMIT THE AMOUNT OF SPENDING TO A SET PERCENTAGE OF GNP. AND
INTERNAL RULES IN THE HOUSE AND SENATE TO TIE APPROPRIATIONS TO
AUTHORIZATION AND BUDGET TARGETS.

IN 1984 I INTRODUCED LINE-ITEM VETO LEGISLATION. I INTRODUCED IT BOTH IN THE STATUTORY FORM AND AS AN AMENDMENT TO THE CONSTITUTION. I RE-INTRODUCED THE LEGISLATION, S. 43., THIS YEAR. IN HIS STATE OF THE UNION ADDRESS, THE PRESIDENT ENDORSED THE LEGISLATION AS A NECESSARY TOOL TO CONTROL SPENDING AND REDUCE THE DEFICIT. IT WAS ONLY THE THIRD TIME IN THE HISTORY OF OUR COUNTRY THAT A PRESIDENT HAS SINGLED OUT A MEMBER OF CONGRESS' LEGISLATIVE INITIATIVE IN THE STATE OF THE UNION MESSAGE.

IN BRIEF, THE LINE-ITEM VETO I PROPOSE WOULD MANDATE THAT ALL ITEMS IN AN APPROPRIATION BILL BE TRANSMITTED TO THE PRESIDENT AS SEPARATE BILLS FOR HIS SIGNATURE OR VETO AS REQUIRED BY THE CONSTITUTION. IN ADDITION, MY PROPOSAL UPHOLDS THE TWO-THIRDS VETO OVERRIDE PROVISION OF THE CONSTITUTION. AND FINALLY, IT WOULD BE IN EFFECT FOR A PERIOD OF TWO YEARS, AFTER WHICH IT

WOULD EXPIRE UNLESS EXTENDED BY CONGRESS. IN OTHER WORDS, IT IS A TRIAL.

THE LINE-ITEM VETO WAS BROUGHT TO THE FLOOR FOR DEBATE LAST YEAR IN ITS STATUTORY FORM, BUT WITH A MAJORITY OVERRIDE PROVISION. IT WAS DEFEATED, I BELIEVE, ON THE CONSTITUTIONAL ISSUE REGARDING THE MAJORITY OVERRIDE. THAT QUESTION HAS NOW BEEN RESOLVED.

BUT THAT HAS NOT ENDED THE CONSTITUTIONAL ARGUMENTS AGAINST THE LEGISLATION. ONE ARGUMENT NOW TAKES THE FORM THAT THE LINE-ITEM VETO ENCROACHES UPON THE CONSTITUTIONAL SEPARATION OF POWERS AS ENVISIONED BY THE FOUNDING FATHERS. THAT IS IT GIVES TO THE PRESIDENT PART OF THE LEGISLATIVE PREROGATIVE--THE POWER OF THE PURSE--THROUGH THE BACK DOOR.

MY ARGUMENT IS, AND WILL BE DURING THE COMING FLOOR DEBATE, THAT NOT ONLY DOES THE LINE-ITEM VETO NOT UPSET THE CONSTITUTIONAL SEPARATION OF POWERS, BUT IT IN FACT RESTORES THE FOUNDERS INTENDED BALANCE. FOR THAT BALANCE HAS BEEN INCREASINGLY TIPPED BY THE CONGRESS THROUGH SUCH DEVICES AS THE LEGISLATIVE VETO AND CERTAIN PROVISIONS OF THE 1974 IMPOUNDMENT CONTROL ACT, OR AS IT IS GENERALLY KNOWN, THE 1974 BUDGET ACT, RESULTING IN THE USE OF VEHICLES LIKE OMNIBUS APPROPRIATIONS BILLS AND CONTINUING RESOLUTIONS AT THE END OF THE FISCAL YEAR.

A FORM OF THE LEGISLATIVE VETO, BY THE WAY, WAS STRUCK DOWN BY THE U.S. SUPREME COURT IN IMMIGRATION AND NATURALIZATION SERVICE V. CHADHA. THE IMPLICATIONS OF THAT CASE HAVE YET TO BE FULLY SORTED OUT.

I AM MUCH INDEBTED TO PROFESSOR JUDITH BEST OF NEW YORK'S CORTLAND COLLEGE FOR HER WORK ON THE CONSTITUTIONAL QUESTIONS SURROUNDING THE LINE-ITEM VETO. IN AN ARTICLE ENTITLED "THE LINE-ITEM VETO: WOULD THE FOUNDERS APPROVE?" SHE ASSERTED THE ITEM VETO IS NECESSARY TO RESTORE THE BALANCE OF POWER BETWEEN THE LEGISLATURE AND THE EXECUTIVE THAT THE FOUNDERS DEEMED ESSENTIAL FOR GOOD GOVERNMENT.

IN A LETTER TO ME SHE WROTE: "THREE SIMPLE STATEMENTS OF FACT HAVE A BEARING ON THE ITEM VETO DEBATE: 1. THE VETO WAS CREATED BY THE FOUNDERS TO BE AN INTERNAL CONTROL ON GOVERNMENT. 2. CONGRESS HAS ERODED THE VETO POWER. 3. GOVERNMENT SPENDING IS OUT OF CONTROL. WHILE THE ITEM VETO IS NOT THE ONLY OR THE

SUFFICIENT SOLUTION TO THE PROBLEM OF GOVERNMENT SPENDING. IT IS A SOLUTION TO THE IMBALANCE OF POWER." AND I AGREE.

BASED ON THOSE FACTS, IT MUST BE CONCLUDED: 1. THE INTERNAL CONTROL ENVISIONED BY THE FOUNDERS HAS BROKEN DOWN. THE EVIDENCE IS HUGE FEDERAL DEFICITS, RESULTING FROM THE INABILITY OF THE CONGRESS TO CONTROL THE LEVEL OF SPENDING AND THE INABILITY OF THE PRESIDENT TO VETO SPENDING BILLS BECAUSE OF THE LEGISLATIVE FORM THOSE BILLS HAVE COME TO ASSUME. 2. THEREFORE THE CONSTITUTIONAL BALANCE OF POWER HAS BEEN UPSET. 3. THE WAY TO RESTORE THE BALANCE IS THROUGH RESTORATION OF THE VETO TO ITS ORIGINAL CONSTITUTIONAL INTENT. 4. AN EFFECTIVE WAY TO DO THAT IS WITH THE ADOPTION OF THE LINE-ITEM VETO.

AS A MEMBER OF THE SENATE APPROPRIATIONS COMMITTEE I CAN BEAR PERSONAL WITNESS TO THE FACTS THAT THE TIMING AND SIZE OF APPROPRIATIONS BILLS ARE SUCH AS TO THWART THE PRESIDENTIAL VETO AUTHORITY. LAST YEAR WAS A PERFECT CASE IN POINT. WE DEBATED THE 1985 BUDGET DOWN TO THE EXPIRATION OF THE FISCAL YEAR SEPTEMBER 30. THEN, DURING THE FIRST FEW DAYS OF OCTOBER, FACED WITH MASSIVE SHUTDOWNS OF FEDERAL AGENCIES AND PROGRAMS, THE CONGRESS RAMMED THROUGH A GIGANTIC CATCH-ALL SPENDING BILL. THE PRESIDENT HAD THE CHOICE OF EITHER VETOING THE ENTIRE BILL AND CLOSING DOWN VITAL FUNCTIONS OF GOVERNMENT, RESULTING IN NATIONAL CRISIS, OR SIGNING THE BILL. SUCH LEGISLATIVE ACTION CLEARLY THWARTS THE CONSTITUTIONAL VETO INTENT.

THE OPPONENTS OF THE LINE-ITEM VETO ARGUE THAT IT IS TRIVIAL, THAT IT REALLY DOES NOT AFFECT THAT MUCH OF THE FEDERAL BUDGET. I ARGUE THE LINE-ITEM VETO IS FUNDAMENTAL TO OUR SYSTEM

OF CHECKS AND BALANCES, THE KEYSTONE OF OUR FEDERAL SYSTEM. IT IS THE KEY TO RESTORATION OF THE CONSTITUTIONAL SEPARATION OF POWERS.

ALEXANDER HAMILTON WROTE IN FEDERALIST 71, THAT WITHOUT THE CONSTITUTIONAL CHECKS AND BALANCES, "SUCH A SEPARATION MUST BE MERELY NOMINAL, AND INCAPABLE OF PRODUCING THE ENDS FOR WHICH IT WAS ESTABLISHED." AND WHAT ARE THOSE ENDS? TO PRESERVE THE AMERICAN DEMOCRACY FROM THE TYRANNY OF A SINGLE DOMINANT BRANCH OF GOVERNMENT. AND WHAT BRANCH'S TENDENCY TOWARD DOMINANCE DID THE FOUNDERS FEEL OUR DEMOCRACY WAS IN THE MOST NEED OF PROTECTION FROM? THE LEGISLATIVE.

WHY? I QUOTE FEDERALIST 71 AGAIN, "THE REPRESENTATIVES OF THE PEOPLE, IN A POPULAR ASSEMBLY, SEEM SOMETIMES TO FANCY THAT

THEY ARE THE PEOPLE THEMSELVES, AND BETRAY STRONG SYMPTOMS OF IMPATIENCE AND DISGUST AT THE LEAST SIGN OF OPPOSITION FROM AN OTHER QUARTER; AS IF THE EXERCISE OF ITS RIGHTS, BY EITHER THE EXECUTIVE OR JUDICIARY, WERE A BREACH OF THEIR PRIVILEGE AND AN OUTRAGE TO THEIR DIGNITY."

I MIGHT ADD THAT THE CONDITION OF LEGISLATIVE ASSEMBLIES DESCRIBED BY HAMILTON STILL PREVAILS IN WASHINGTON, BUT THAT IS ANOTHER STORY FOR ANOTHER DAY.

I EXPECT THE LINE-ITEM VETO TO COME BEFORE THE SENATE FOR DEBATE IN THE NEXT FEW MONTHS. I BELIEVE IT CAN AND SHOULD BE AN HISTORIC DEBATE. I BELIEVE IT WILL BE SYMBOLIC OF THE MOVEMENT IN GOVERNMENT AT THE FEDERAL LEVEL DURING THE LAST FOUR YEARS. A MOVEMENT BACK TOWARD A RESPONSIBLE, CONSTITUTIONALLY LIMITED

16

GOVERNMENT. LIMITS THAT HAVE BEEN STRETCHED BEYOND THE SCOPE OF THE CONSTITUTION BY AN EXCESS OF LEGISLATING AND INTERNAL RULE MAKING. IT IS TIME TO BEGIN TO RESTORE THE BALANCE. ONLY THEN CAN WE HOPE TO ADDRESS THE FEDERAL BUDGET IN A RESPONSIBLE AND REALISTIC WAY.

IN CONCLUSION, AS A LAYMAN BEFORE THE LEGAL PROFESSION, I WANT TO LEAVE YOU WITH SOME GENERAL THOUGHTS ON THE LAW. DURING MY TERM IN THE SENATE I HAVE GAINED A DEEP AND ABIDING RESPECT FOR THE FOUNDATION OF OUR SYSTEM; THE U.S. CONSTITUTION.

I ACKNOWLEDGED SEVERAL IMPORTANT ANNIVERSARIES IN OPENING. IN FOUR YEARS WE WILL CELEBRATE THE 200TH ANNIVERSARY OF OUR CONSTITUTION, THE GREATEST LEGAL AND MORAL DOCUMENT YET AUTHORED BY MAN. THIS YEAR IS THE 40TH ANNIVERSARY OF THE LIBERATION OF

THE NAZI CONCENTRATION CAMPS IN EUROPE. MEMORIALS OF THE HOLOCAUST ARE BEING OBSERVED THROUGHOUT OUR COUNTRY AND THE WORLD.

WHAT DO THE AMERICAN CONSTITUTION AND THE HOLOCAUST HAVE IN COMMON? SIMPLY THIS: THE IRREVOCABLE FACT THAT THE LAW IS NOT NEUTRAL. THE LAW HAS MORAL CONTENT OR IT IS NOT LAW AT ALL.

THERE IS A DIFFERENCE. THE HOLOCAUST DID NOT BREAK GERMAN LAW. APARTHIED DOES NOT BREAK SOUTH AFRICAN LAW. THE MURDER OF AN AMERICAN SERVICEMAN AND A PLANELOAD OF INNOCENT HUMAN BEINGS WERE BOTH LEGAL UNDER THE SOVIET UNION'S INTERPRETATION OF ITS LAW. IN ALL THOSE CASES, THE END...WHETHER THE MURDER OF SIX MILLION JEWS OR THE OPPRESSION OF TWENTY MILLION PEOPLE IN THEIR

OWN LAND...IS THE ONLY JUSTIFICATION. NO HIGHER JUSTICE, NO MORAL CONTENT IS RECOGNIZED.

THE GREATNESS OF THE AMERICAN SYSTEM AND THE REASON IT WILL PREVAIL IS THE MORAL CONTENT OF OUR LAW. A MORAL CONTENT DERIVED FROM THE CONSTITUTION, LIKE CLEAR WATER FROM A SPRING, AND THAT DOCUMENT'S ENSHRINING OF THE HUMAN RIGHTS OF LIBERTY AND JUSTICE FOR ALL.

AS JEFFERSON STATED SO WELL IN HIS 1801 INAUGURAL ADDRESS:
"I BELIEVE THIS...THE STRONGEST GOVERNMENT ON EARTH. I BELIEVE IT THE ONLY ONE WHERE EVERY MAN, AT THE CALL OF THE LAW, WOULD FLY TO THE STANDARD OF THE LAW, AND WOULD MEET INVASIONS OF THE PUBLIC ORDER AS HIS OWN PERSONAL CONCERN."

SUCH WAS AN ELOQUENT PROLOGUE FOR OUR NATION. AND PROLOGUE
IT REMAINS ALMOST TWO CENTURIES LATER. BECAUSE AMERICA'S BEST
DAYS ARE STILL AHEAD.

THANK YOU.