



February 14, 2006

Politics & Society

Clerical Error Jeopardizes Deficit-Reduction Law

by Julie Rovner

Morning Edition, February 13, 2006 · The \$39 billion deficit-reduction bill signed by President Bush last week was nearly a year in the making. It passed in the House by a mere two votes, and it passed in the Senate only after Vice President Cheney broke a tie. But a clerk's error has raised the possibility that the bill might not be law yet, after all.

During the official White House signing ceremony last Wednesday, Bush praised the measure. "This important piece of legislation restrains federal spending -- and it will leave more money in the pockets of those who know how to use it best, the American people," he said.

But behind the scenes there was a scramble going on. It seems a clerk accidentally changed a number on one of the Medicare provisions of the bill after the measure left the Senate but before it returned to the House for a final vote. The mistake -- worth hundreds of millions of dollars -- was fixed before the bill went to the White House. But it appears that the bills that passed the House and Senate were not the same -- and that's a problem.

"This violates one of the most fundamental guarantees in the Constitution, namely that both houses of Congress have to agree on all elements of a bill before it becomes law," said David Vladeck, a professor at the Georgetown University Law Center and an expert on cases involving constitutional separation of powers.

This particular glitch is much more serious than the normal typo or error that gets passed by both houses and fixed later, said Vladeck. "This bill is not a law because it doesn't meet the requirements of bicameralism," he said.

Lawmakers are apparently entering uncharted constitutional territory. "As far as I know, this precise question has never arisen in the past," said Vladeck, an opinion shared by several scholars, including the former parliamentarian for the U.S. House of Representatives.

Republican lawmakers, who spent much of last year getting the measure through, say the issue is being overblown. House Majority Whip Roy Blunt says there's no question that the bill is now a law. "The president signed it. It is law. If there is a technical problem, I think it can be solved in a technical way," said Blunt.

In fact, just hours after the bill signing, the Senate tried to do just that: It passed a resolution clarifying that the bill sent to the president reflected the intent of both the House and Senate. The House hasn't acted on it yet, but Vladeck says even if it does, it won't cure the measure's constitutional defect. "That would be a Band-Aid that would not fix the problem," he said.

Vladeck says he hopes the problem won't have to be resolved by a lawsuit. "I hope Congress stands up and says there was an error made, in order to preserve our constitutional responsibility, we will go back and re-enact this legislation and this time we won't fudge."

But going back to re-enact the measure is about the last thing Republicans want to do, said Norman Ornstein of the American Enterprise Institute. "The reason this passed by the narrowest of margins is that there's so much that is controversial, that leaves large numbers of constituencies unhappy," Ornstein said.

"This is like saying to somebody who's just been through childbirth without anesthetic, 'Oops, we made a little

mistake there. We're going to reinsert the fetus and you'll have to go through it again.' "

If Congress doesn't revote, however, there is a long line of people who could sue, starting with those affected by the billions of dollars in cuts to Medicare and Medicaid, said Sara Rosenbaum, a law professor at the George Washington University School of Public Health.

"Any aggrieved party, whether it's a large hospital that was supposed to get more Medicare payments, or a beneficiary who was supposed to get more Medicaid benefits, could allege, potentially, in court, that the government conduct was unlawful because in fact there was no change in the law. The bill is a nullity," she said.

House Democrats, having blocked the clarifying resolution, are now trying to decide whether to try to force the revote on the entire bill.