

National University of Ireland, Maynooth

From the Selected Works of Seth Barrett Tillman

February 10, 2005

Extract from Peter M. Shane and Harold H. Bruff's Separation of Powers Law citing Tillman's A Textualist Defense

Seth Barrett Tillman



Available at: https://works.bepress.com/seth_barrett_tillman/51/

veto device here—and in many other settings—is far from an instance of legislative tyranny over the Executive. It is a necessary check on the unavoidably expanding power of the agencies, both executive and independent, as they engage in exercising authority delegated by Congress....

Justice REHNQUIST, with whom Justice WHITE joins, dissenting.

...Because I believe that Congress did not intend the one-House veto provision of §244(c)(2) to be severable, I dissent.... Congress has never indicated that it would be willing to permit suspensions of deportation unless it could retain some sort of veto....

1. *Further Reading.* Both before and after *Chadha*, the topic of the legislative veto has produced a large volume of literature. Good examples of the various pre-*Chadha* positions include: David A. Martin, *The Legislative Veto and the Responsible Exercise of Congressional Power*, 68 Va. L. Rev. 253 (1982); Jacob K. Javits & Gary J. Klein, *Congressional Oversight and the Legislative Veto: A Constitutional Analysis*, 52 N.Y.U. L. Rev. 455 (1977); Robert Dixon, *The Congressional Veto and Separation of Powers: The Executive on a Leash?*, 56 N.C. L. Rev. 423 (1978). Also, compare 43 Op. A.G. No. 10 (1977) (approving legislative veto of proposed Reorganization Act) with 43 Op. A.G. No. 25 (1980) (denying constitutionality of legislative veto in General Education Provisions Act, 20 U.S.C. §1232(d)). For analysis of *Chadha*, see E. Donald Elliott, *INS v. Chadha: The Administrative Constitution, the Constitution, and the Legislative Veto*, 1983 Sup. Ct. Rev. 125; Laurence H. Tribe, *The Legislative Veto Decision: A Law by Any Other Name?*, 21 Harv. J. Legis. 1 (1984). For a textually based critique of *Chadha* arguing that the Supreme Court misconstrued the presentment clauses, see Seth Barrett Tillman, *A Textualist Defense of Article I, Section 7, Clause 3*, 83 Tex. L. Rev. — (2005).

Separation of Powers Law

Cases and Materials

Second Edition

Peter M. Shane

JOSEPH S. PLATT-PORTER, WRIGHT,
MORRIS & ARTHUR PROFESSOR OF LAW
THE OHIO STATE UNIVERSITY
MORITZ COLLEGE OF LAW

Harold H. Bruff

CHARLES INGLIS THOMSON PROFESSOR OF LAW
UNIVERSITY OF COLORADO AT BOULDER