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Extract fom Michael J. Gerhardt's The Power of Precedent citing Tillman's A Textualist Defense

Seth Barrett Tillman, *None*

The Power of Precedent

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140. Richard H. Fallon, Jr., *Judicially Manageable Standards and Constitutional Meaning*, 119 Harv. L. Rev. 1274, 1314 (2006).
141. *Id.* at 1324–25.
142. Kermit Roosevelt III, *Aspiration and Underenforcement*, 119 Harv. L. Rev. 193 (2006).
143. Kermit Roosevelt III, *Constitutional Calcification: How the Law Becomes What the Court Does*, 91 Va. L. Rev. 1649 (2005); Mitchell N. Berman, *Constitutional Decision Rules*, 90 Va. L. Rev. 1 (2004).
144. Fallon, *supra* note 140, at 1316.
145. 462 U.S. 919 (1983).
146. Neal Devins & Lou Fisher, *The Democratic Constitution* (Oxford Univ. Press 2004).
147. See, e.g., Seth B. Tillman, *A Textualist Defense of Article I, Section 7, Clause 3*, 83 Tex. L. Rev. 1 (2005); Peter L. Strauss, *Legislative Theory and the Rule of Law: Some Comments on Rubin*, 89 Colum. L. Rev. 427 (1989); Laurence

H. Tribe, *The Legislative Veto Decision: A Law By Any Other Name?* 21 Harv. J. Legis. 1 (1984); E. Donald Elliott, *INS v. Chadha: The Administrative Constitution, the Constitution, and the Legislative Veto*, 1983 Sup. Ct. Rev. 125.

148. See generally Louis Fisher, Congressional Research Service Report, *Legislative Vetoes after Chadha.*, May 2, 2005 (counting more than 400 legislative vetoes enacted after *Chadha*).
149. See generally William N. Eskeridge, Jr., Philip P. Frickey, & Elizabeth Garrett, *Cases and Materials on Legislation: Statutes and the Creation of Public Policy* 787–800, 1036–39 (3d ed., West 2001) (discussing the implications of social science research on equilibrium for understanding the strategic interaction of public institutions over questions of public law).
150. U.S. Const., art. IV, § 2.
151. See, e.g., Leo Sandon, *Religious Tests for Public Office: Enough Already*, Tallahassee Democrat, Nov. 5, 2005, at D1; Editorial, *Faith and the Court*, N.Y. Times, Oct. 18, 2005, at A26.

An example of this dynamic is Congress' response to *INS v. Chadha*,[146] in which the Court struck down the legislative veto—an arrangement in which one or both chambers of Congress or a legislative committee may override an executive action. Constitutional and administrative law scholars for 20 years have emphasized this aspect of *Chadha*—that the Court on that day struck down parts of more statutes than it had previously in its entire history.[147] Yet, immediately after *Chadha*, an angry Congress began finding other ways to reassert its contrary views about the relationship between the executive and legislative branches, and in time turned the state of affairs back in the direction of the pre-*Chadha* world they wanted in the first place.[148] Through their active resistance to fully implementing *Chadha*, Congress reached a point of equilibrium with the Court over their different positions on the constitutionality of legislative vetoes,[149] and its resistance influenced how lower courts construed arrangements like the