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From the Selected Works of Seth Barrett Tillman

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Extract from Rotunda & Nowak, Treatise on Constitutional Law (4th ed. Supp. 2008) citing Bruhl-Tillman exchange on Article I's Bicameralism Requirement

Seth Barrett Tillman, *None*

TREATISE ON CONSTITUTIONAL LAW

SUBSTANCE AND PROCEDURE

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by

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Chapters 9-16

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CHAPTER 10

HOW A BILL BECOMES A LAW

§ 10.6 Bicameral Conference Committee Action

§ 10.6(e) Procedural Steps for Enactment of Bill Must Be within the Two-Year Term of any Given House

The Senate, unlike the House, is often called a continuing body because only one-third of its members are elected every two years. Every two years, the entire House stands for election. Each of these two year terms is labeled as, e.g., the 104th Congress, or the 105th Congress, and so forth.

By historical tradition, the House and Senate must both pass a particular bill during the term of the same two-year Congress.³⁵ This is the historical meaning of the Presentment Clause.³⁶ However, the Constitutional text is not exact on this issue, so one may make an argument that the bill does not die when the term of Congress ends.³⁷

However, it is unlikely, at this late date, given all historical understanding for many years, that Congress will change its practice. We do know that the President may sign a bill after termination of a two-year House term.³⁸

³⁵E.g., Michael Stokes Paulsen, A General Theory of Article V: The Constitutional Lessons of the Twenty-Seventh Amendment, 103 Yale L.J. 677, 689 (1993): "Individual Congresses expire every two years. Bills passed by only one house have no legal significance. To become laws, they must be passed by both houses and not vetoed by the President within the same term of Congress."

³⁶U.S. Const., Art. I, § 7, clause 2.

³⁷Seth Barrett Tillman, Noncontemporaneous Lawmaking: Can the 110th Senate Enact a Bill Passed by the 109th House?, 16 Cornell J.L. & Pub. Policy 331

(2007)(arguing that non-contemporaneous law-making is permissible); Aaron-Andrew P. Bruhl, Against Mix-and-Match Lawmaking, 16 Cornell J.L. & Pub. Policy 349 (2007) (responding to Mr. Tillman's arguments); Seth Barrett Tillman, Defending the (No So) Indefensible, 16 Cornell J.L. & Pub. Policy 361 (2007) (responding to Mr. Bruhl).

³⁸Edwards v. U.S., 286 U.S. 482, 52 S. Ct. 627, 76 L. Ed. 1239 (1932)(President has power to approve bill after final adjournment of Congress, but must act within ten days, Sundays excepted, after bill has been presented to him.).