
Seth Barrett Tillman

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Chapters 9–16
§ 10.8 Legislative Veto of Executive Branch Regulations and Actions

n. 5. See also, Seth Barrett Tillman, Reply, The Domain of Constitutional Delegations under the Orders, Resolutions and Votes Clause, 83 Texas L. Rev. 1389 (2005).

n. 8. For an interesting historical argument that disagrees with INS v. Chadha, see Seth Barrett Tillman, A Textualist Defense of Article I, Section 7, Clause 3: Why Hollingsworth v. Virginia was Rightly Decided, and Why INS v. Chadha was Wrongly Reasoned, 83 Texas L. Rev. 1265 (2005), Seth Barrett Tillman, Reply, The Domain of Constitutional Delegations Under the Orders, Resolutions and Votes Clause, 83 Texas L. Rev. 1389 (2005); see Gary S. Lawson, Burning Down the House (and Senate): A Presentment Requirement for Legislative Subpoenas Under the Orders, Resolutions, and Votes Clause, 83 Texas L. Rev. 1373 (2005). Although James Madison took a contrary position in his Notes on the Debates in the Federal Convention (published posthumously in 1840), Tillman argues that considerable textual and roughly contemporaneous American (and British) historical evidence supports the position that the original meaning of the Orders, Resolutions and Votes Clause was to permit a statute to delegate lawmaking authority to a single house acting (by order, resolution or vote) subject to presentation, with the concomitant possibility of veto and two-house override.

Gary S. Lawson, Burning Down the House (andSenate): A Presentment Requirement for Legislative Subpoenas Under the Orders, Resolutions, and Votes Clause, 83 Texas L. Rev. 1373 (2005), also appearing at, http://papers.rszorn.com/wel91/papers.cfm/abstract_id=556789, which agrees in principle with Tillman’s, A Textualist Defense, but limiting the practical effect of Orders, Resolutions and Votes Clause to congressional subpoenas that must be presented to the President and authorized by prior statute.

See also Commonwealth v. Canton, 1782 WL 5, 5 Va. (4 Cell.) 5 (1782) (the Case of the Prisoners), reported at, 2 David John Mays, The Letters and Papers of Edmund Pendleton 1734–1803 (1967). Pendleton was President of the Supreme Court of Appeals of Virginia. In one of a number of bench issued seriatim opinions, Pendleton held that, although a constitutional provision may authorize a statute to delegate lawmaking authority to a single house, that power was unexercised by the legislature. See id. at 416–427; see also id. (Dandridge, J., dissenting) (governor’s power to issue pardon transferred to lower house by joint operation of constitutional and statutory provisions); id. (Mercer, J., dissenting) (same).

§ 10.10 Amending the Constitution


n. 15. On the history leading to the Seventeenth Amendment, see, Todd J. Zywicki, Beyond the Shell and Husk of History: The History of the Seventeenth Amendment and its Implications for Current Reform Proposals, 45 Cleveland St. L. Rev.165, 163–201 (1997).