Extract from Rotunda & Nowak, Treatise on Constitutional Law (4th ed. 2007) citing Lawson-Tillman exchange and Tillman's Reply to Lawson on Article I, Section 7, Clause 3

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TREATISE ON
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use of the legislative veto as unconstitutional on several grounds:


See also, Seth Barrett Tillman, Reply, The Domain of Constitutional Delegations under the Orders, Resolutions and Votes Clause, 83 Texas L. Rev. 1399 (2005).

Prior to 1983, the Supreme Court generally declined to address the issue of the constitutionality of the legislative veto. In 1976, the Court chose to rest its decision in Buckley v. Valeo, 424 U.S. 1, 140 n. 176, 96 S.Ct. 612, 622 n. 176, 46 L.Ed.2d 659, 757 n. 176 (1976) (per curiam), motion granted 424 U.S. 936, 96 S.Ct. 1152, 47 L.Ed.2d 727 (1976) on other grounds, and expressly refused to reach the constitutional challenge to the legislative veto provision of the Federal Election Campaign Act of 1971. Justice White, in a separate opinion, however, argued for the constitutionality of the legislative veto:

424 U.S. at 292-96, 96 S.Ct. at 756-58, 46 L.Ed.2d at 857-59 (concurring in part and dissenting in part).

Two years later, the Court summarily affirmed the constitutionality of the Federal Pay Comparability Act, which continued a congressional-veto provision. Presler v. Simon, 428 F.Supp. 392 (D D.C 1976), appeal after remand 434 U.S. 1029, 98 S.Ct. 768, 54 L.Ed.2d 776 (1978). As Justice Rehnquist noted in his concurrence, the summary affirmation could have been based on the conclusion that the plaintiffs lacked standing without the Court reaching the veto issue. 434 U.S. at 1029-29, 98 S.Ct. at 758, 54 L.Ed.2d at 776. The Court in the same term also denied certiorari review of a Court of Claims decision upholding the Federal Salarv Act congressional veto provision. Atkins v. United States, 214 Ct.Cl. 186, 556 F.2d 1028 (1977), certiorari denied 434 U.S. 1009, 98 S.Ct. 718, 54 L.Ed.2d 751 (1978). See also Clark v. Valeo, 569 F.2d 645, 649-60 (D.C Cir. 1977) (en bane) (question not ripe because the legislative veto had not been exercised), affirmed on appeal sub nom., Clark v. Kimmitt, 431 U.S. 950, 97 S.Ct. 2867, 53 L.Ed.2d 267 (1977); McCorkle v. United States, 559 F.2d 1258 (4th Cir. 1977) (constitutionality of legislative veto not addressed because the provision was not severable from the remainder of the statute and any ruling would not change the result), certiorari denied 434 U.S. 1011, 98 S.Ct. 724, 54 L.Ed.2d 755 (1978).
§ 10.8 TREATISE ON CONSTITUTIONAL LAW

(1) that one-house veto provisions violate the sections of Article I of the Constitution requiring legislation to pass both chambers of Congress; (2) that legislative veto provisions violate the presentment clause of Article I requiring the presentment of legislation to the President for approval or veto; and (3) that legislative veto provisions generally contravene the separation of powers doctrine implicit in Articles I, II and III.7

(b) The Chadha Decision

On June 23, 1983, the Supreme Court finally resolved the issue in Immigration and Naturalization Service v. Chadha.6 In a broad ruling the Court held that the legislative veto provision contained

7In Consumer Energy Council of America v. FERC, 673 F.2d 425 (D.C.Cir.1982), affirmed sub nom., Process Gas Consumers Group v. Consumer Energy Council of America, 463 U.S. 1216, 103 S.Ct. 3556, 77 L.Ed.2d 1402, 1403, 1413 (1983), rehearing denied 463 U.S. 1250, 104 S.Ct. 40, 77 L.Ed.2d 1457 (1983), the petitioners also argued that the one-house legislative veto constitutes an undue delegation of congressional power to a single house of Congress. The Court of Appeals found that the provision was unconstitutional on Article I and separation of powers grounds and declined to reach the undue delegation of powers issue. 673 F.2d at 448 n. 82.


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. 1285 (2005), Seth Barrett Tillman, Reply, The Domain of Constitutional Delegations Under the Orders, Resolutions and Votes Clause, 83 Texas L. Rev. 1373 (2005), also appearing at, http://papers.ssrn.com/sol3/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. Caton, 1782 WL 5, 8 Va. (4 Call.) 5 (1782) (the Case of the Prisoners), reported at, 2 David John Maya, The