

Sec. 7—Bills and Resolutions

Cls. 1–3—Legislative Process

ing of tariff rates, the disposal of federal property—then began expanding the device to give itself authority to negate regulations issued by executive branch agencies. Proposals were also made to give Congress the power to negate all regulations issued by independent agencies.⁵²²

In *INS v. Chadha*,⁵²³ however, the Court held a one-House congressional veto to be unconstitutional as violating both the bicameralism principles reflected in Art. I, §§ 1 and 7, and the presentment provisions of § 7, cl. 2 and 3. The provision in question was § 244(c)(2) of the Immigration and Nationality Act, which authorized either house of Congress by resolution to veto the decision of the Attorney General to allow a particular deportable alien to remain in the country. The Court's analysis of the presentment issue made clear, however, that two-house veto provisions (despite their compliance with bicameralism) and committee veto provisions suffer the same constitutional infirmity.⁵²⁴ In the words of dissenting Justice White, the Court in *Chadha* "sound[ed] the death knell for nearly 200 other statutory provisions in which Congress has reserved a 'legislative veto.'" ⁵²⁵

In determining that a veto of the Attorney General's decision to suspend a deportation was a legislative action requiring presentment to the President for approval or veto, the Court set forth the general standard. "Whether actions taken by either House are, in law and in fact, an exercise of legislative power depends not on their form but upon 'whether they contain matter which is properly to be regarded as legislative in its character and effect.' [T]he action

⁵²² A bill providing for this failed to receive the two-thirds vote required to pass under suspension of the rules by only three votes in the 94th Congress. H.R. 12048, 94th Congress, 2d sess. See H. REP. NO. 94-1014, 94th Congress, 2d sess. (1976), and 122 CONG. REC. 31615-641, 31668. Considered extensively in the 95th and 96th Congresses, similar bills were not adopted. See *Regulatory Reform and Congressional Review of Agency Rules: Hearings Before the Subcommittee on Rules of the House of the House Rules Committee*, 96th Congress, 1st sess. (1979); *Regulatory Reform Legislation: Hearings Before the Senate Committee on Governmental Affairs*, 96th Congress, 1st sess. (1979).

⁵²³ 462 U.S. 919 (1983).

⁵²⁴ Shortly after deciding *Chadha*, the Court removed any doubts on this score with summary affirmance of an appeals court's invalidation of a two-House veto in *Consumers Union v. FTC*, 691 F.2d 575 (D.C. Cir. 1982), *aff'd sub nom.* *Process Gas Consumers Group v. Consumer Energy Council*, 463 U.S. 1216 (1983). Prior to *Chadha*, an appellate court in *AFGE v. Pierce*, 697 F.2d 303 (D.C. Cir. 1982), had voided a form of committee veto, a provision prohibiting the availability of certain funds for a particular purpose without the prior approval of the Committees on Appropriations.

⁵²⁵ *Chadha*, 462 U.S. at 967. Justice Powell concurred separately, asserting that Congress had violated separation-of-powers principles by assuming a judicial function in determining that a particular individual should be deported. Justice Powell therefore found it unnecessary to express his view on "the broader question of whether legislative vetoes are invalid under the Presentment Clauses." *Id.* at 959.