

Sec. 1—The President

Clause 1—Powers and Term of the President

partment's earlier contention, following *Buckley v. Valeo*, that the execution of the laws is an executive function that may be carried out only by persons appointed pursuant to the Appointments Clause, thus precluding delegations to state and local officers and to private parties (as in *qui tam* actions), as well as providing glosses on the Take Care Clause (Article II, § 3) and other provisions of the Constitution. Whether these memoranda signal long-term change depends on several factors, including whether they are adhered to by subsequent administrations.

In striking down the congressional veto as circumventing Article I's bicameralism and presentment requirements attending the exercise of legislative power, the Court also suggested in *INS v. Chadha*⁴⁶ that the particular provision in question, involving veto of the Attorney General's decision to suspend deportation of an alien, in effect allowed Congress impermissible participation in execution of the laws.⁴⁷ And, in *Bowsher v. Synar*,⁴⁸ the Court held that Congress had invalidly vested executive functions in a legislative branch official. Underlying both decisions was the premise, stated in Chief Justice Burger's opinion of the Court in *Chadha*, that "the powers delegated to the three Branches are functionally identifiable," distinct, and definable.⁴⁹ In a standing-to-sue case, Justice Scalia for the Court denied that Congress could by statute confer standing on citizens not suffering particularized injuries to sue the Federal Government to compel it to carry out a duty imposed by Congress, arguing that to permit this course would be to allow Congress to divest the President of his obligation under the Take Care Clause and

significantly from previous positions of the Department of Justice. For conflicting versions of the two approaches, see *Constitutional Implications of the Chemical Weapons Convention: Hearings on the Constitution, Federalism, and Property Rights Before the Senate Judiciary Subcommittee*, 104th Cong., 2d Sess. (1996), 11–26, 107–10 (Professor John C. Woo), 80–106 (Deputy Assistant Attorney General Richard L. Shiffrin).

⁴⁶ 462 U.S. 919 (1983).

⁴⁷ Although Chief Justice Burger's opinion of the Court described the veto decision as legislative in character, it also seemingly alluded to the executive nature of the decision to countermand the Attorney General's application of delegated power to a particular individual. "Disagreement with the Attorney General's decision on Chadha's deportation . . . involves determinations of policy that Congress can implement in only one way . . . Congress must abide by its delegation of authority until that delegation is legislatively altered or revoked." 462 U.S. at 954–55. The Court's uncertainty is explicitly spelled out in *Metropolitan Washington Airports Auth. v. Citizens for the Abatement of Aircraft Noise*, 501 U.S. 252 (1991).

⁴⁸ 478 U.S. 714 (1986).

⁴⁹ 462 U.S. at 951.