

Sec. 3—Legislative, Diplomatic, and Law Enforcement Duties of the President

the Senate passed a resolution of disapproval.⁷¹² With the decision in *INS v. Chadha*,⁷¹³ voiding as unconstitutional the one-House legislative veto, it was evident that the veto provision in the deferral section of the Impoundment Control Act was no longer viable. An Administration effort to utilize the section, minus the veto device, was thwarted by court action, in which, applying established severability analysis, the court held that Congress would not have enacted the deferral provision in the absence of power to police its exercise through the veto.⁷¹⁴ Thus, the entire deferral section was inoperative. Congress, in 1987, enacted a more restricted authority, limited to deferrals only for those purposes set out in the Anti-Deficiency Act.⁷¹⁵

With passage of the Act, the constitutional issues faded into the background; Presidents regularly reported rescission proposals, and Congress responded by enacting its own rescissions, usually topping the Presidents'. The entire field was, of course, confounded by the application of the other part of the 1974 law, the Budget Act, which restructured how budgets were received and acted on in Congress, and by the Balanced Budget and Emergency Deficit Control Act of 1985.⁷¹⁶ This latter law was designed as a deficit-reduction forcing mechanism, so that unless President and Congress cooperate each year to reduce the deficit by prescribed amounts, a "sequestration" order would reduce funds down to a mandated figure.⁷¹⁷ Dissatisfaction with the amount of deficit reduction continues to stimulate discussion of other means, such as "expedited" rescission and the line-item veto, many of which may raise some constitutional issues.

Power and Duty of the President in Relation to Subordinate Executive Officers

If the law casts a duty upon a head of department *eo nomine*, does the President thereupon become entitled by virtue of his duty to "take Care that the Laws be faithfully executed," to substitute his own judgment for that of the principal officer regarding the dis-

⁷¹² § 1013, 88 Stat. 334. Because the Act was a compromise between the House of Representatives and the Senate, numerous questions were left unresolved; one important one was whether the President could use the deferral avenue as a means of effectuating policy impoundments or whether rescission proposals were the sole means. The subsequent events described in the text mooted that argument.

⁷¹³ 462 U.S. 919 (1983).

⁷¹⁴ *City of New Haven v. United States*, 809 F.2d 900 (D.C. Cir. 1987).

⁷¹⁵ Pub. L. 100-119, title II, § 206(a), 101 Stat. 785, 2 U.S.C. § 684.

⁷¹⁶ Pub. L. 99-177, 99 Stat. 1037, codified as amended in titles 2, 31, and 42 U.S.C., with the relevant portions to this discussion at 2 U.S.C. §§ 901 *et seq.*

⁷¹⁷ See Stith, *Rewriting the Fiscal Constitution: The Case of Gramm-Rudman-Hollings*, 76 CALIF. L. REV. 593 (1988).