

VETO RULE ATTACKED BY ADMINISTRATION

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Byline: By STUART TAYLOR Jr., Special to the New York Times

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Body

The Reagan **Administration** has questioned the constitutionality of all legislative **veto**es in urging the Supreme Court to strike down a provision in the immigration law that authorizes either house of Congress to **veto** certain rulings by the Attorney General.

"Various forms of Congressional control of executive action, short of duly enacted legislation, are unconstitutional," the Justice Department stated in papers filed in the Supreme Court Friday, in what it said was "the view of this and previous **Administrations**."

The statement contrasted with campaign statements by Mr. Reagan last year and a Republican platform provision, which broadly endorsed use of the legislative **veto** as a means of controlling regulatory agencies.

A legislative **veto** is an action by Congress or, in some cases, a Congressional committee to overrule a regulation or other action by an executive branch or independent regulatory agency without meeting the constitutional requirements for enacting a new law.

Justice Department urges Supreme Court to strike down immigration law provision empowering Congress to **veto** rulings by Attorney General **Veto** Authorized by 150 Laws

More than 150 existing laws have provisions authorizing legislative **veto**es. Some allow either the House, the Senate or a committee of either body to **veto** specified regulations or other executive branch actions. Others require agreement by both houses on such a **veto** but allow no role for the President.

In its brief to the Supreme Court, the Justice Department argued that the one-house **veto** provision in the Immigration and Naturalization Act was unconstitutional because "any exercise by Congress of its legislative powers must receive the concurrence of both houses and be submitted to the President for his approval or **veto**."

The provision "also violates the separation of powers under the Constitution by involving the legislative branch in the execution of the law," the Justice Department argued.

The Supreme Court has never **ruled** on the constitutionality of the legislative **veto**, which has become increasingly popular in Congress in the last decade but which has been opposed by every President since Herbert Hoover as an encroachment on Presidential powers.

Related Case in Appeals Court

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The Justice Department's appeal to the Supreme Court was unusual in that the department had argued successfully against the veto in a case in the United States Court of Appeals for the Ninth Circuit in San Francisco. The appeals court struck down the one-house veto provision as unconstitutional in December.

The case involved deportation proceedings against Jagdish Rai Chadha, a Kenyan of Indian extraction, who came to the United States in 1966 on a student visa and sought to stay after the visa expired in 1972. He said it would be difficult or impossible for him to return to Kenya or go to Great Britain because of his race.

Immigration officials "suspended" deportation of Mr. Chadha on hardship grounds, under a provision of the immigration act authorizing the Attorney General or his designate to take such action subject to the power of either house of Congress to invalidate it.

The House disapproved this decision without debate or a recorded vote and called for the deportation of Mr. Chadha and five other aliens in December 1975. Joshua Eilberg, then a Democratic Representative from Pennsylvania and the sponsor of the disapproval resolution, said that the six aliens did not appear to meet the legal requirements for suspension of deportation.

Ruling Praised by Carter

Mr. Chadha's lawyers, joined by the Justice Department, asked the appeals court to declare as unconstitutional the legislative veto and the immigration act provision.

The appeals court's ruling in favor of Mr. Chadha was the first time a Federal court had invalidated a legislative veto provision. Jimmy Carter, then President, praised the decision as "profoundly significant."

Justice Department lawyers had said that they would seek a Supreme Court ruling affirming this decision, hoping to resolve the constitutionality of legislative vetos, and that there was precedent for such an appeal in cases involving the constitutionality of acts of Congress.

Last month, the Justice Department denounced as unconstitutional a bill that would give either house of Congress the power to veto rules and regulations adopted by Federal agencies in the absence of contrary action by the other house.

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