The Legislative Veto:
An Overview of Congressional Oversight

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Since the end of World War II, the modern-day American governmental system has undergone a nearly complete transformation from that established by the Founding Fathers. The framers of the Constitution set up three co-equal branches of government which until the 1930's had remained distinctly separate. However, due to the pressing necessity for an increasingly more activist federal government role in otherwise non-governmental areas, the lines between the executive and legislative branches began to blur. Since the executive required more authority to implement policy goals such as social assistance programs (social security, welfare, medicare, Aid to Families with Dependent Children, etc.), urban and rural development programs (public housing, highway systems, water projects, etc.), and business/labor projects, Congress instituted hundreds of new agencies, bureaus, and commissions to oversee these policy initiatives. However, as Congress delegated powers to these agencies with only broad guidelines, it became increasingly clear that Congress needed to formulate a method by which it could oversee the specific regulations adopted by each agency. In the 1930's, Congress began incorporating the use of a stipulation that when attached to a bill would ensure that each proposed policy regulation could be scrutinized by Congress before it obtained the force of law. This became known as the legislative veto. This veto, in effect, granted Congress the power to reject agency proposals before they could cause any legal problems. This congressional oversight mechanism was instituted to ensure
that the federal bureaucracy policies kept within the intent of
the broad statutes approved by Congress and the President. Even
though this tool has been used for the last fifty years and has
become ingrained in the federal process of bureaucratic over­
sight, the legislative veto continued to be bombarded with heavy
criticism from several legislators and constitutional scholars
while at the same time receiving the praise of countless other
congressmen and political parties.

Furthermore, congressional reliance upon this tool has
increased dynamically as Congress added this veto provision on
to more and more bills. It appeared that Congress had found
this extension of its authority as the most satisfactory means
of checking various agencies' proposed regulations. However, on
the eve of Congress' enacting wide legislation which would make
the legislative veto applicable to all agency regulations, the
United States Supreme Court, in a controversial but sweeping
decision, struck down the application of the legislative veto by
holding it to be in violation with the Constitution.

Exactly what this entails for the Congress and the exercising
of its oversight function is questionable. In order to examine
these options, it is essential to note the origin, growth, and
impact of the legislative veto over the last several decades.

When the legislative veto was first established, it was
derived from a need to keep watch over the bureaucracy. In order
to exercise this veto, Congress, whether by the House, Senate,
Committee, Committee Chairman, or others, may disapprove or approve
of a proposed regulation from an agency of the executive branch after the enactment of the law which granted the agency the proper authorization to issue such policy decisions. The legislative veto is in essence a reflection of administration sharing between the executive branch and the legislative branch. The process functions in such a way that the agency needs to clear proposed rules, procedures, and guidelines with the required group as provided for by that particular statute. This approval process is termed "a coming into agreement" which is in effect an agreement between agency personnel and legislative personalities. For the most part, agreement is reached at an early stage and the legislative veto is only exercised sparingly. Typically, if the legislative group disagrees with the submitted proposal, the issue is either resolved privately or the agency withdraws the proposal in order to submit a revision which will usually follow the views of the legislators.

Furthermore, the legislative veto exists in several forms. The most prevalent is the one-house veto. This is whereby either the House of Representatives or the Senate may adopt a resolution conveying disapproval of the proposed agency action during an allotted time period. This time period is usually thirty, sixty, or ninety days. However, some statutes allow a congressional review period to be as short as five days or as lengthy as three years. Secondly, the next most used form of the veto is the two-house veto. Both the House of Representatives and the Senate must adopt resolutions against the proposal during the time period.
Because of this veto, the agency would have to resubmit a plan to the Congress for new consideration.

Another form of the legislative veto includes the "silent veto." Both houses can let the proposals die if they do not approve the rules submitted within a set number of days. Thus, if no congressional action occurs then the regulations are silently disapproved. This veto may take two forms. First, both houses of Congress must pass resolutions of approval in order to approve the agency regulations. Secondly, if either house approves the guidelines proposed then the agency recommendations are accepted and will have the force of law.

Another format of the legislative veto revolves around committee approval or disapproval. With this form, the individual committee which is responsible for checking on that agency becomes the legislative actor which can approve or disapprove the proposed action. Some veto provisions require corresponding committees in both houses to adopt the rules proposed by the agency in order for the rules to be approved. However, other provisions allow for either committee to strike down the proposal by passing a resolution to that effect.

As reflected in the number of forms this veto can take, the veto provision has grown exponentially. In 1932, Congress granted to President Hoover broad powers of executive department reorganization. However, these plans required approval by the Congress. Thus, this, in effect, was the first legislative veto. This reorganization power granted to the President has been extended to every President until it was withdrawn from President
Nixon because of the Watergate scandal. It was later reinstated under the Carter administration.\textsuperscript{5} During the remainder of the 1930's, only four other statutes were passed which included the legislative veto provision. However, during the 1940's, nineteen additional veto provisions were attached to bills and thirty-four more were passed during the 1950's. Throughout the 1960's and 1970's, the number of veto provisions grew at a feverish rate as the need for additional congressional oversight was demanded as a result of an expanding bureaucracy.\textsuperscript{6} The Congress, by use of various veto provisions, has actually stopped agency regulations thirty-one times within the last five years. These vetoed regulations were mostly controversial proposals.\textsuperscript{7}

As pointed out, the legislative veto has been used at an increasingly more frequent rate over the past few decades. Several historical and economic developments have acted as incentives to encourage the use of the veto provision. The first veto provision, as already discussed, was in 1932 granting presidential authority in reorganizing the executive departments. During World War II, the President needed more power and authority in the realm of foreign policy because of America's leadership in conducting the war. Thus, Congress extended to the executive branch increased independence in that area, but it added the provision of the legislative veto in order to have some check on the newly delegated authority. However, it should be noted that even though Congress granted additional powers to the President and in exchange incorporated the veto provision to check that power,
Congress has never vetoed any major foreign policy initiative conducted by the President. Nevertheless, this threat of using the legislative veto cautioned Presidents to consult the Congress more fully and completely in the area of foreign policy developments. Following World War II, the need for increased public works programs and military projects also culminated in congressional oversight by use of the veto. However, these vetoes usually took the form of committee vetoes. As the nation began to expand by providing more substantive social programs during the 1960's and 1970's, Congress began adding the legislative veto to several statutes in the area of domestic concern. Furthermore, during the Nixon years and the highwater mark of the "imperial presidency," the legislative veto began being extended to specific regulatory agencies and bureaus. Recently, during the 96th and 97th Congresses, Congressman Elliot H. Levitas proposed H.R. 1776 with 200 co-sponsors. This piece of legislation would attach a legislative veto provision upon all future and present regulatory legislation. This bill would allow the proposed regulations of any agency to be defeated if either house of Congress voted it down within sixty days and if the other house does not approve it within an additional thirty days. Also, instead of going through the procedure for using the legislative veto, either house may direct an agency to reformulate a suggested regulation. If that agency does not do so within 180 days, the regulation dies. However, if the agency does rewrite the proposal, it is still subject to the veto process. Several departments or agencies already have their entire regulatory content subject to congressional veto.
These include the Federal Trade Commission, Consumer Product Safety Board, and the Department of Education. All in all, it is relevant to point out that as Congress extends authority to executive departments, it exacts a price which is the threat of using the legislative veto. One scholar comments about the growth of the veto and presidential reactions; "but soon presidential objections were tempered by desire for added grants of authority from Congress; often, the congressional veto -- in the form of a concurrent or simple resolution, or committee-level veto power -- was the price Congress exacted in return for the transfer of additional power to the executive branch."11

Thus, by the mid-1980's, the use and growth of the legislative veto as a primary means of congressional oversight spanned from foreign policy initiatives to domestic and regulatory issues.12 Also, its potential for increased usage continued to expand.

Even though the Congress continued to use the legislative veto provision more and more (until it was recently overturned by the Supreme Court), the debate concerning it raged on. Both those who opposed the veto and those favoring it have valid arguments in support of their positions. The veto proponents hold that:

1. it speeds up the burdensome legislative process because Congress is able to pass broad outlines in policy formation with the assurance that it can later review the specifics,

2. the reviewable nature of the veto allows Congress to check for "bad law" and to assure that the elected officials see the proposal before it has the force of law, 13

3. the veto deflects unelected bureaucrats from shaping specific policy and from straying too far from the original legislative intent of the law,
4. the veto helps maintain the democratic nature of the system as it encourages a more open and accountable system,

5. the use of the veto eases politically difficult decisions,

6. it allows Congress a safeguard for policy areas in which ultimate future goals are as yet undefined. 14

Furthermore, during the last three presidential elections, attacking the bureaucracy for its excessive power and red tape was unquestionably a forceful campaign issue. In 1976 the Democratic Convention approved the use of the legislative veto because it aided in bureaucratic accountability, helped check executive excesses and was a useful congressional oversight tool. The 1976 Democratic Platform read:

There must be an ever-increasing accountability of government to the people. The Democratic Party is pledged to the fulfillment of four fundamental citizen rights of governance: the right to competent government; the right to responsive government; the right to integrity in government; the right to fair dealing by government.

To assure that government remains responsive to the people's elected representatives, the Democratic Party supports stepped-up congressional agency oversight and program evaluation, including full implementation of the congressional budget process; an expanded, more forceful role for the General Accounting Office in performing legislative audits for Congress; and restraint by the President in exercising privilege designed to withhold necessary information from Congress. 15

Also, in 1980, the Republican National Convention went a step farther by actually endorsing, by name, the legislative veto. (Even though candidate Ronald Reagan endorsed the veto as a means of controlling the bureaucracy in 1980, as President, he applauded the decision of the Supreme Court in declaring it unconstitutional.)
The Republican Platform reads:

The Republican Party reaffirms its belief in the decentralization of the federal government and in the traditional American principle that the best government is the one closest to the people. There, it is less costly, more accountable, and more responsive to people's needs.

Federal departments, agencies, and bureaus should be consolidated where possible to end waste and improve the delivery of essential services. Republicans pledge to eliminate bureaucratic red tape and reduce government paperwork. Agencies should be made to justify every official form and filing requirement.

The unremitting delegation of authority to the rulemakers by successive Democratic Congresses and the abuse of that authority have led to our current crisis of overregulation. For that reason, we support use of the Congressional veto, sunset laws, and strict budgetary control of the bureaucracies as a means of eliminating unnecessary spending and regulations. 16

In addition to official support from both major political parties, many House and Senate committee hearings have undoubtedly reflected the urgent need for some type of congressional oversight. In 1980, Congressman Elliot H. Levitas testified in hearings on House bill H.R. 1776 which would attach the legislative veto provision to all agency regulations. "I am on the Government Operations Committee and the Public Works Committee, and I have sat in oversight hearings and heard questions asked of high officials as to why they wrote a regulation in this way or put a program into place in a fashion that way contrary to Congress' intent. I have heard assistant secretaries say we just did not think that was the way to go. It is that type of arrogance from those who are not suffering the inconvenience of running for public office who think they should make the laws which legislative veto addresses." 17
Furthermore, many officials in the federal bureaucracy also agree with this assessment. "There has been an enormous ceding of power to people who are not elected. People like us pass what amount to laws," said Federal Trade Commission General Counsel John Carley.\textsuperscript{18}

Finally, support for the legislative veto seemed to be gaining strength in the court system (until the Chadha case) as Supreme Court Justice Byron White delivered an opinion which conferred a sense of legitimacy upon the veto. In \textit{Buckley v. Valeo} he wrote that in "light of history and modern reality, the provision for Congressional disapproval of agency regulations does not appear to transgress the constitutional design, at least where the President has agreed to legislation establishing the disapproval procedure or the legislation has been passed over his veto."\textsuperscript{19}

Even though there appears to be wide agreement in favor of the veto, countless points can likewise be made in its opposition. One of the largest concerns revolves around the area of vagueness of congressional laws. It is felt that because of the legislative veto, agencies almost certainly receive more broad guidelines from Congress and thus have more power to formulate specific regulations. At times, the agency can do no more than just guess as to the proper legislative intent of the law. When the laws are vague, many agency proposals are vetoed when they are submitted to Congress for approval because they were out of line with the congressional intent of the law. However, deciding the intent in vague laws and guidelines is a major stumbling block to efficient policy formation. Therefore, the agency as well as Congress wastes
valuable time in clarifying vague laws and drafting proposals which parallel congressional intent.\textsuperscript{20} This tends to clog up the already lengthy and burdensome machinery of government.

Furthermore, another criticism of the legislative veto stems from its tendency to politicize issues needlessly. Even though most proposals are readily approved, occasionally the principles involved are of a highly volatile political nature. When this happens, a great deal of political capital is involved and expended. Also, this fight in partisan politics can bog down the process in such a way in which the legislative and executive decision making process is severely slowed or derailed. "The legislative veto and shared administration may become lethal instruments of the American decision making process," noted one constitutional scholar in rather harsh criticism of the veto provision.\textsuperscript{21}

Professor Harold Seidman, a legal expert, notes that the Congress has, by constant consultation with various regulatory agencies it is responsible for, used the legislative veto to "confer authority without responsibility." In addition, the veto causes the lines between the executive and the legislative authority to become cloudy, and this causes agencies to be less accountable because of the knowledge of potential congressional role-playing. Also, the veto provision seems to institutionalize the ad hoc nature of bureaucratic oversight which involves special interest pressure groups.\textsuperscript{22} This results in a loss of the independent nature of Congress. Senator Bob Packwood, a Republican from the state of Oregon and once a proponent of the legislative veto,
remarked, "the legislative veto is an open invitation for special interest groups to come to Congress and singlehandedly, doggedly, very zealously pursue and pursue, badger and badger until it pays off. You would be amazed how much this zealousness pays off."\textsuperscript{23}

In other criticisms, several legislators have expressed the concern that this process of fine-tuning regulations robs important time from more relevant matters. Professor Barbara Craig, who has researched this area extensively, agrees with these concerns by stating that ". . . when the legislative veto is used as a lubricant to reduce the friction inherent among today's difficult regulatory policy choices, it has not resolved conflict, it has merely postponed resolution. This 'faster' route to law-making can result in a policy void."\textsuperscript{24}

Lastly, a major area of disagreement erupts from the issue of the legislative veto's constitutionality. Many opponents are concerned because the U.S. Constitution states that the only method by which laws can be made is by their passage by both houses of Congress and the necessity of the President's signature or the use of Congress' power to override the President's veto. In the case of the legislative veto, the President does not have the opportunity to sign or to veto the resolution of approval or disapproval passed by the Congress. Furthermore, in many cases, only one house has disapproved the proposed regulations and thus many critics believe this to be a violation of the bicameral nature of the legislative branch. They also view the veto as an infringement upon the separation of powers principle.\textsuperscript{25}
In 1983, the American Bar Association filed an Amicus Curiae Brief in the Chadha case in opposition to the legislative veto. It pointed out the veto is a deterrent to the executive constitutional powers to execute the law of the land, and more importantly the veto power is an aggrandizement of the power of judicial review as implemented by the court system.26

Although knowing the advantages and disadvantages of the legislative veto issue is important, perhaps even more so are the ways in which it has altered the power sharing arrangement between the executive branch and the legislative branch. First, the legislative veto has certainly been applied as a congressional bargaining chip to achieve presidential concessions. In exchange for these concessions, the Congress grants the President his desired regulation or act of legislation.27 In addition, the Congressional Research Service (CRS) has reported that the veto has been an instrument for increasing executive authority because the Congress has been more willing to delegate additional power to the executive since it can add the stipulation of a veto to check executive decisions. Furthermore, the service reports that Congress would never have delegated so much authority to the bureaucracy if it lacked the used of the legislative veto.28

Another consequence of the legislative veto concerns constituency interests. Since agencies are so close, both functionally as well as politically, to constituency interests and concerns, congressmen often turn to the veto as a weapon to battle for their own "iron triangle" agency when it faces the threat of elimination or other challenges.29
In addition, another drastic shift in power has occurred between the basic policy formation relationships. According to Theodore Lowi, the three policy areas include the distributive, administrative, and the pluralistic arenas of power. Before the veto, the centers of power were concentrated in the "iron triangles." These are three-sided relationships between specific industries, governmental agencies, and their corresponding House and Senate committees from whose authority their power is derived. These iron triangles were small, specialized groups of related interests which internally decided the fate of bills, regulations, and other orders concerning the subject at hand. This setup resulted in:

1. specific decision making,
2. pockets of specialization,
3. stable coalitions, and
4. less public exposure and thus less politicization.

However, due to many rule changes in Congress, in agencies, and in the courts, the process became more open to outside influences such as interest groups, and therefore the power began shifting to the pluralistic arena.

In this area, Congress as a whole examined these policies that were previously decided in the iron triangles. Large consumer groups as well as many public interest groups pressure Congress to adopt their specific goals. Therefore, Congress has opted to decide the broad policy goals and guidelines and have left the executive departments to fill in the details. Thus, while Congress must act in the pluralistic arena of influence, the individual
agencies must deal in the administrative arena since Congress has hesitated or lacked the ability to reach, without a great deal of political cost, specific decisions. With the veto provision, Congress has tended to delegate more authority to the agencies in order to fill in the specific regulations. All in all, because of the veto, Congress is pluralistic as a lawmaking body — making broad decisions. It then allows the bureaucracy to work out the specifics. This administrative function is then checked by the various committees of Congress and by use of the legislative veto. 30

After examining the effects of the legislative veto, scanning a few examples will undoubtedly help to pinpoint the affects of the veto. The sale of AWACs to the government of Saudi Arabia in 1981 and the passage of the War Powers Act in 1973 were both affected by the legislative veto provisions. In 1976, Congress passed the Arms Export Control Act which stated that the President must notify Congress of a weapon sale. Within thirty days, the Congress could stop the sale by adopting a negative two-house resolution. On October 1, 1981, President Ronald Reagan notified Congress of his intention to sell to Saudi Arabia five AWAC planes. Because of the recent law, Congress had the power to stop the sale within the thirty day period. The House of Representatives passed a resolution on October 14 by a vote of 301-111 to stop the proposed sale. Next, the issue went to the Senate for debate. The administration argued that the AWACs were needed to promote American policy objectives in the Middle East. These included:
1. preservation of American access to the Persian Gulf area,
2. deter soviet influence in the Middle East,
3. enhance security needs of U.S. allies, and
4. cement American resolve, as seen by Middle East nations, by backing up allies with deeds as well as with words.

On the other side, opponents argued that the sale would:
1. cause instability in the Middle East,
2. threaten the security interests of Israel,
3. cause Israel to spend more funds for increased military defense and thus causing more economic strain on their already faltering economy,
4. be dangerous because these planes could fall into terrorist hands.

Despite the intense lobbying efforts of the Israeli lobby, the Senate defeated the resolution by a vote of 48 to 52 on October 28. Even though this was perceived as a substantial foreign policy victory for President Reagan, it cost a great deal to achieve. The consequences of this attempted veto were farreaching. It required:
1. executive expenditure of a five month lobby effort,
2. massive expenditure of limited presidential capital,
3. demonstration to foreign powers the lack of bi-partisanship in U.S. foreign policy,
4. exhaustive campaigning which House Speaker Tip O'Neal remarked as a display of the "awesome power" of the President,
5. costing many concessions not otherwise needed,
6. the involvement of countless lobbying groups of foreign nations which was perceived as an "infringe-ment" upon the American political system.
The cost was so substantial that John Tower, Senator from Texas, remarked, "every major arm sales agreement has been played out amidst an acrimonious national debate, blown all out of proportion to the intrinsic importance of the transaction in question." Furthermore, Representative Lee Aspin, a Democrat from Wisconsin, said, ". . . if we do not sell, the effect is enormous. The countries involved take it as a personal affront and as a rejection. That is what gets us into trouble, that we make these deliberations in public as we do, and if the decision is negative, it can have severe consequences." 

The next case study revolves around the War Powers Act. Like the previous example, it also includes the legislative veto provision. This act is much more controversial for it deals with regulating presidential war power authority. Within this act, the President can commit U.S. troops into hostile foreign areas for only a specific number of days. After this time, Congress, by a joint resolution, can vote to extend their stay. Thus, unless Congress votes approval, the President must withdraw the troops. This stipulation is referred to as the "silent veto." However, several constitutional scholars challenge the legality of this provision on the grounds that it renders the Commander-in-Chief powers of the President obsolete and trespasses on the spirit of the Constitution. "In maintaining the rights against a trespassing Congress, the President defends not himself, but popular government; he represents not himself, but the people," argues Robert F. Turner of the Foreign Policy Research Institute.
Furthermore, Adam Carlyle Brechenridge, author of *The Executive Privilege: Presidential Control over Information*, sums up the argument:

> Under our Constitution, each branch of Government is designed to be a coordinate representative of the will of the people... Defense by the Executive of his constitutional powers becomes in very truth, therefore, defense of popular rights -- defense of power which the people granted him. It was in this sense that President Cleveland spoke of his duty to the people not to relinquish any of the powers of his great office. It was in that sense that President Buchanan stated the people have rights and prerogatives in the execution of his office by the President which every President is under a duty to see "shall never be violated in his person" but "passed to his successors by the adoption of a dangerous precedent." 35

All in all, the debate raged on about the constitutionality of this act of Congress in part because of the inclusion of the legislative veto until 1983. On June 23, 1983, the United States Supreme Court handed down a 7-2 decision which had the force of negating part of 200 or more federal statutes. This case, *Immigration and Naturalization Service v. Chadha*, struck down more laws in this one ruling than the court has overturned in 200 years. Justice Powell, in a concurring opinion, wrote that "the breadth of this holding gives one pause," as the Supreme Court held that the legislative veto Congress has been using for fifty years was unconstitutional. 36 The facts are as follows.

Jagdish Rai Chadha was an East Indian who was born in Kenya, but who traveled with a British passport. He had been in the U.S. since 1966 with non-immigrant student status. His visa was to expire in 1972. By 1973, he was ordered to appear before a deportation hearing because his visa had expired. He then filed
papers to allow him to stay in the United States. At the immigration hearing, the judge ruled in favor of Chadha and granted his petition to remain in the United States because evidence found and affidavits presented were all favorable to his character. In addition, other factors which helped his position were the facts that he met the requirements of the Immigration and Nationality Act which included the necessity of being in the United States for at least seven years, having good moral character, and would be subject to negative treatment if he were deported back to his native country.

Next, the United States Attorney General submitted the decision to Congress. Under the Immigration and Nationality Act, Congress has the power to use the legislative veto to set aside the recommendation of the Attorney General. Should the Congress reverse the Attorney General's suggestion, then the person must be deported as soon as arrangements could be made.

On December 12, 1975, Representative Eilberg, Chairman of the Judiciary Subcommittee on Immigration, Citizenship, and International Law submitted a proposal to refuse the "granting of permanent residence in the United States to six aliens." On December 16, 1975, the resolution was approved by the House in an unrecorded vote. Therefore, by use of the legislative veto, Congress had caused the immigration judge to begin the process of deportation of Chadha as required by law.

Chadha then appealed to the Board of Immigration Appeals arguing that the congressional use of the veto provision was
unconstitutional. However, they dismissed the case on grounds that they could not rule on the constitutionality of a law. In lieu of this, the U.S. Court of Appeals decided to take the case. The court ruled that the Congress was without Constitutional authority and instructed the Attorney General to stop deportation procedures. Its main holding was that the implementation of this legislative veto was contrary to the doctrine of the separation of powers. The Supreme Court, noting the importance of the case, granted certiorari.37

In the opinion, Chief Justice Warren Burger held that "convenience and efficiency are not the primary objectives -- or the hallmarks -- of democratic government . . . . policy arguments supporting even useful "political inventions" are subject to the demands of the Constitution which defines power and, with respect to this subject, sets out how those powers are to be executed." The court based its ruling on three constitutional provisions:

1. Article I: "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives." Section 1.

2. Article I, Section 7, Clause 2: "Every bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a law, be presented to the President of the United States."

3. Article I, Section 7, Clause 3: "Every Order, Resolution, or Vote to which concurrence of the Senate and House of Representatives may be necessary shall be presented to the President of the United States, and before the same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill." 38
The requirement that all legislation be submitted to the President has an undoubtedly firm basis in the original arguments of the Founding Fathers. This is a check of congressional power and the obvious intent for the President and the Congress to share legislative powers in lawmaking. Furthermore, Burger conveyed in the opinion that the check of having the President as an active role in this process is to help screen legislation with the need of the entire nation in mind and not the specific needs of a few people. In other words, the President, as the national representative, should insure a national perspective in the lawmaking process.

In reference to the second constitutional principle listed, Burger wrote in the majority opinion that the framers of the Constitution undoubtedly felt the bicameral nature of the new document was as important as the issue of presidential review over pieces of legislation. This attempt to deliberately slow the process down in order to secure that fair laws are debated within each separate chamber was essential to the designated process. Furthermore, it seems apparent that policies dealing with matters outside the legislative branch must go through the process of Presentation and Bicameralism in order to be valid. Thus, reversing the decision of the Attorney General can only be accomplished through the same means by which this power was granted -- through the legislative process. Thus, the adoption of a regulation or veto of a regulation creeps dangerously close to infringement upon the safeguards of the system.
In addition, Chief Justice Burger pointed out in his opinion that whenever the constitutional framers agreed to allow one house of Congress to act without the other, they listed those conditions in the Constitution. They are:

1. House of Representatives -- power to initiate impeachments,
2. Senate -- power to try impeachments,
3. Senate -- power to approve treaties and review executive appointments.

Thus, again the Constitution does not suggest the use of any other measures. These few are the only ones explicitly stated.

Therefore, to preserve the existing checks of power through the Presentation clause, the Bicameral nature of the system, and the keeping within the spirit of the Constitution, the Supreme Court could not uphold the legislative veto. It simply blurred the lines in the separation of powers doctrine. In the final analysis, the Supreme Court simply compared the issue at hand -- the legislative veto -- with the intent of the Constitution and found that the two were not parallel.

The veto authorized by the S 244(c)(2) doubtless has been in many respects a convenient shortcut; the "sharing" with the Executive by Congress of its authority over aliens in this manner is, on its face, an appealing compromise. In purely practical terms, it is obviously easier for action to be taken by one House without submission to the President but it is crystal clear from the records of the Convention, contemporaneous writings and debates that the Framers ranked other values higher than efficiency. The records of the Convention and debates in the States proceeding ratification underscore the common desire to define and limit the exercise of the newly created federal powers affecting the states and the people. There is unmistakeable expression of a determination that legislation by the national Congress be a step-by-step deliberate and deliberative process.
The choices we discern as having been made in the Constitutional Convention impose burdens on governmental processes that often seem clumsy, ineffective, even unworkable, but those hard choices were consciously made by men who had lived under a form of government that permitted arbitrary governmental acts to go unchecked. There is no support in the Constitution or decisions of this Court for the proposition that the cumbersomeness and delays often encountered in complying with explicit Constitutional standards may be avoided, either by Congress or by the President.... With all the obvious flaws of delay, untidiness, and potential for abuse, we have not yet found a better way to preserve freedom than by making the exercise of power subject to the carefully crafted restraints spelled out in the Constitution." 39

However, Justice Byron White felt that now only had the Court overstepped its boundaries but had used the wrong legal arguments. He writes is his dissent:

A legislative check on inherently executive function, for example that of initiating prosecutions, poses an entirely different question. But the legislative veto devised here -- and in many other settings -- is far from an instance of legislative tyranny over the Executive. It is a necessary check on the unavoidably expanding power of the agencies, both executive and independent, as they engage in exercising authority delegated by Congress.

I regret that I am in disagreement with my colleagues on the fundamental questions that this case presents. But even more I regret the destructive scope of the Court's holding. It reflects a profoundly different conception of the Constitution than that held by the Courts which sanctioned the modern administrative state. Today's decision strikes down in one fell swoop provisions in more laws enacted by Congress than the Court has cumulatively invalidated in its history. I fear it will now be more difficult "to insure that the fundamental policy decisions in our society will be made not by an appointed official but the body immediately responsible to the people. I must dissent." 40

Because of this landmark decision, the impact will be felt for a long time. Immediately, the status of several laws are
partially in doubt. First, the legislative veto provision of the War Powers Act is overruled. The Congressional Budget and Impoundment Control Act of 1974 which allows either house of Congress to veto the executive branch from deferring or cancelling funding for programs is likewise stripped of this provision. Furthermore, the Military Appropriation Authorization Act of 1975 which allows both houses of Congress, by joint resolution, to halt the export of technology or military products is also paralyzed. Others include the International Development and Food Assistance Act of 1975 allowing a two-house veto halting funding to nations which violate human rights, the National Emergencies Act of 1976 which allowed both houses to end a presidentially declared national emergency, and the Nuclear Non-proliferation Act of 1978 in which Congress could halt the export of nuclear technologies, facilities, or disposal of nuclear fuels. 41

On the other hand, the area of impact is not limited to foreign policy matters but includes all veto provisions affecting:

1. regulatory agencies for nearly all have restrictions attached,

2. economic policies including agricultural loan regulations, approval for changing interest rates, and countless parts of the 1983 budget package,

3. social programs including social security standards and unemployment pay scales,

4. environmental policies including offshore drilling leases, sale of federal lands of 2,500 acres or more, and the policies of toxic substance disposal, 42

5. defense policies including the Arms Export Control Act which was the legislation discussed in the AWAC sales.
Thus, it is apparent that Congress will be forced to find some alternative method of oversight, and fairly soon, since it is obvious at a glance the tremendous change this one decision has made upon fifty years worth of congressional action. Senator Charles Grassley, Republican from Iowa, has summed up the feelings of the majority of Congress by stating, "the Court decision has catapulted Congress into years of complex, cumbersome legislative activity to repose our original powers."43

Several alternatives have already emerged as possible solutions to this dilemma Congress faces. Among the alternatives are:

1. **Joint Resolution Veto** whereby both houses must disapprove a proposal and then this resolution must be sent to the President. Thus, to defeat the proposed rules, Congress must follow the entire lawmaking process;

2. **Joint Resolution of Approval** whereby both houses must approve a proposal along with the President for it to become law;

3. **Establishment of Select Committee** which would review regulations and would report for House consideration any that it finds should be altered. Then, Congress must engage in the legislative process to change it;

4. **Congressional Challenge of Rules in Court** which would allow an individual congressman to challenge the proposed rule in court after both houses have passed a joint resolution disapproving the rule;

5. **Summit Conference on the Veto** which would simply gather a group of high ranking scholars, legislative officials, agency personnel, and congressmen to find more solutions for this problem;

6. **Modification of House Rules** to allow "no appropriation" riders to be attached to legislation containing undesired rules or regulations;

7. **Constitutional Amendment** which would overturn the Chadha Supreme Court decision;
8. More detailed and precise lawmaking by Congress;
9. Enforcement of Traditional Stipulations such as using more powers of the purse, hearings, investigations, and sunset stipulations. 

The sunset provisions would force agencies or regulations to terminate unless Congress decided to reinstate them.

All in all, these alternatives are but a small start in the search for effective oversight functions.

By following the course of the history, purpose, definition, growth, and arguments both for and against the legislative veto, it is obvious how substantial this provision of congressional oversight was. Furthermore, how Congress deals with the impact of the Supreme Court decision and what steps it will take to circumvent the impact will undoubtedly be important to note since any movement will require still future shifts in the way powers are granted and shared between the legislative and executive branches.

What the result will be and how Congress will effectively deal with the dilemma cannot be foreseen, but undoubtedly, the challenge it presents is one of unique characteristics for the solution will certainly alter the course of congressional decision making throughout the next generation.
ENDNOTES


4Ibid., pp. 62-64.

5Lepawsky, p. 82.

6Rosen, p. 63.


9Rosen, pp. 146-147.

10Craig, p. 1.

11Craig, p. 16.

12Craig, p. 27.

13Craig, p. 2.

14Craig, pp. 28-29.

15Rosen, p. 81.

16Rosen, p. 82.


20. Rosen, p. 163.


22. Craig, p. 38.


28. Rosen, pp. 63-64.

29. Lepawsky, p. 82.

30. Craig, pp. 5-7.


35. Turner, pp. 132-134.

37 Ibid.

38 Article I, U.S. Constitution.


40 Ibid., Dissenting opinion.


42 Andersen, Time, p. 13.

43 Ibid.

44 Craig, pp. 144-146.

BIBLIOGRAPHY


