

THE "LEGISLATIVE VETO" SUPREME COURT DECISION

By

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On 23 June 1983 the United States Supreme Court declared the "legislative veto" unconstitutional. Although this decision may bring about some changes in Legislative-Executive relations regarding US security assistance, it is difficult to predict how extensive the changes will be. With its legislative veto intact, Congress had the power to nullify particular kinds of Executive decisions. The "legislative veto" had been used as a convenient way to grant broad executive authority while reserving the right to withdraw that authority in some specific applications.

The legislative veto was introduced in 1932, when President Hoover sought authority to reorganize the government. As a compromise with Congress to receive reorganizational authority, he accepted a provision in the broad statutes which permitted lawmakers to review Executive Branch implementations of the law. It permitted Congress, or just a single committee, to veto any Executive action with which committee members did not agree. The numbers of laws, including varieties of legislative veto provisions, have steadily increased; and some observers feared the potential for a new law by which Congress would grant itself sweeping veto authority over a wide variety of Executive actions.[1]

The Supreme Court decision on 23 June grew out of a challenge to Section 242(c)(2) of the Immigration and Nationality Act. The case involved a Kenyan student, Ragdish Rai Chadha, who had been admitted legally in the U.S. on a non-immigrant student visa. He was ordered to show cause to why he should not be deported, having violated his residency permit. On 11 Jan 1974, Chadha admitted that he had overstayed his visa, and the hearing was adjourned to allow Chadha to file an application for suspension of deportation. On 25 June 1974, the immigration judge ordered Chadha's deportation suspended, for he had met the requirements under Section 244(a)(1) of the Immigration and Nationality Act, to remain in the United States. On 12 December 1975 a resolution was introduced by Representative Eilberg then Chairman of the Judiciary Subcommittee on Immigration, Citizenship and International Law, opposing the granting of permanent resident in the United States to six aliens, including Chadha. On 16 December 1975, the resolution was referred to the House Committee on the Judiciary. The resolution later passed by the House without debate or recorded vote. Since the House action was taken under Section 244(c)(2), the resolution wasn't treated as an Article 1 Legislative Act; i.e., it was not submitted to the Senate or presented to the President for his action.[2]

The ninth US Circuit Court of Appeals held that the House was not within its constitutional limits to order Chadha's deportation. The reasoning behind the court's decision was that Section 244(c)(2) violates the constitutional doctrine of separation of power. The Supreme Court affirmed that decision on 23 June 1983.

A remaining and important issue is that of "severability"; i.e., whether or not unconstitutional provisions within a law makes the entire law unconstitutional. In Immigration and Naturalization Service v. Chadha the court decided that the rest of the law is valid.[3] According to Martin Tolchin, in the New York Times, "More than 200 laws containing more than 350 legislative veto provisions have been passed in the last half century, more than half of them in the last decade and about one third in the last five years." [4]

Major laws which apparently could be affected by this decision include the Department of Defense Appropriation Authorization Act of 1975 (whereby Congress could restrict export of certain defense related or technical products) and the Arms Export Control Act, as amended (whereby Congress is permitted to override a presidential decision to sell military equipment to a foreign country). Although Congress has never approved a concurrent resolution of disapproval for a proposed military equipment sale, there has been considerable Congressional interest in such sales. The example which immediately comes to mind is the debate in Congress concerning the sale of AWACS aircraft to Saudi Arabia that ensued in 1981. Congress has not overridden an Executive decision to sell military hardware to foreign countries, but came close in votes concerning the proposed AWACS sale. The vote was 301 to 111 against in the House, and the Senate acquiesced reluctantly 52 to 48 after much "persuasion" by President Reagan. [5]

Observers and even experts can do little more than speculate on the ramifications of the recent Supreme Court decision. Procedures for reporting to Congress will likely continue as an integral part of the US security assistance process. Political action following Executive notifications to Congress will be extremely interesting and important for the security assistance community. Continuing litigation will further define the legal ramifications of the Chadha decision.

ENDNOTES

1. Martin Tolchin, "Hoover Was First to Let Congress Veto President," New York Times, 24 Jun 1982, p. B-4.
2. "Excerpts from Supreme Court Decision on Legislative Vetos," New York Times, 24 Jun 1982, p. B-5; from the Majority Opinion by Chief Justice Burger.
3. Ibid.
4. Tolchin, "Hoover Was First"
5. Newsweek, 12 October 1981, p. 39.

ABOUT THE AUTHOR

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