# Chadha - The Legislative Veto and Separation of Powers

# Learning Objectives – INS v. Chadha

## Learn about the Great Compromise and how is it embodied in the legislative process.

## Learn when the House and Senate can act without presentment to the president.

## Learn how the court evaluates a long standing practice that is potentially unconstitutional.

## Learn who is the real party at interest when the constitutionality of a law is challenged.

# Reading Assignment

## INS v. Chadha, 462 U.S. 919 (1983) - <http://biotech.law.lsu.edu/cases/adlaw/ins_v_chadha.htm>

# Issues to be addressed

## Background information

### What is the source of congressional power over aliens?

#### Congress' Art. I power "To establish an uniform Rule of Naturalization," combined with the Necessary and Proper Clause, grants it unreviewable authority over the regulation of aliens.

#### Does Congress treat all persons who come to the US the same?

##### For example, are Haitians subject to the same immigration rules are Cubans?

#### Based on the Constitutional grant of authority, why isn’t this an equal protection problem?

### Basic Rights of Aliens

#### Aliens in the US, even illegals, get constitutional protections in criminal law proceedings.

#### Illegal aliens have limited rights to a hearing before an administrative judge on detention and deportation issues.

### Agency Changes since this case

#### The INS is now ICE - http://www.ice.gov/

##### What is the significance of the shift?

## Chadha’s Situation

### Did Chadha enter the country legally?

### How did he become deportable?

### Does the statute give the agency the discretion to stay his deportation?

### What did the ALJ find?

### Did the agency agree?

## Legislative Veto

### What is the role of the House of Representatives in the law challenged by Chadha?

### If they had not acted, would Chadha have been able to stay in the country?

### Did they specifically vote against Chadha, i.e., did they make any factual determination to refute what the ALJ had found in the individual deportation cases?

## Remand to the ALJ

### The ALJ (immigration judge) reopened the proceeding.

### Does the ALJ or the agency have the right to override the congressional act?

### Can the agency refuse to follow what it believes is a congressional action taken under an unconstitutional law?

### Who would have to make that decision?

## The Circuit Court

### DOJ joined Chadha in challenging the law

### Why did Congress claim this produced a "case and controversy" issue?

#### What is the purpose of the case and controversy provision?

#### Can Congress modify the requirement?

#### Are the states bound to have a case and controversy requirement for their courts?

## At the Supreme Court

### Standing question – remember the Defense of Marriage standing question when the DOJ would not defend?

#### Why did the court invite Congress to submit briefs?

#### Why would Congress have standing?

### Analyzing a long used procedure

#### What did the Court tell us about the tradition of using the legislative veto?

##### Does history make the legislative veto constitutional?

##### Does it matter if the procedure is useful?

### The constitutional requirements for passing a law

#### Bicameralism

##### What was the Great Compromise?

###### Why was it critical to the ratification of the constitution?

##### How is the senate different from the house?

###### How were senators originally chosen?

###### Senate rules are not from the constitution, they are a latter add-on by the Senate

##### Why was bicameralism key to making the Great Compromise work?

##### How does the Great Compromise still affect the functioning of congress?

#### Checks and Balances

##### How does bicameralism it fit into the checks and balances of the US Constitution?

##### How has the evolution of the Senate's rules changed from the intent behind the compromise?

###### Did the founders contemplate modern political parties?

##### How does the House legislative veto violate bicameralism?

#### Presentment Clause

##### What is the president’s role once legislation has passed the house and senate?

##### What if he does not sign it?

###### The Constitution grants the President 10 days to review a measure passed by the Congress. If the President has not signed the bill after 10 days, it becomes law without his signature.

###### Pocket veto - However, if Congress adjourns during the 10-day period, the bill does not become law.

#### Presidential Veto

##### Why does the constitution give the president a veto?

##### What can Congress do if the president vetoes a bill?

##### How have bills changed since the founding that makes it very difficult to veto a bill?

## When may the House of Representatives Act Unilaterally?

### (a) The House of Representatives alone was given the power to initiate impeachments. Art. I, § 2, cl. 5;

### (b) The House elects the president if no candidate gets a majority in the Electoral College.

## When may the Senate Act Unilaterally?

### (a) conduct trials following impeachment on charges initiated by the House and to convict following trial. Art. I, § 3, cl. 6;

### (b) elects the vice-president if no one receives a majority of votes in the Electoral College.

### (c) final unreviewable power to approve or to disapprove Presidential appointments. Art. II, § 2, cl. 2;

### (d) unreviewable power to ratify treaties negotiated by the President. Art. II, § 2, cl. 2.

## What is the Only Congressional Joint Resolution with Legal Effect?

### Congress declares war by joint resolution

### Does the Constitution provide a specific mechanism to end wars?

#### Why?

## What is the significance of these narrow exceptions?

### Why did the court find the legislative veto a major constitutional issue?

### What did the court rule?

### Has this crippled government function?

### Does it strengthen agency powers?

## Report and Wait Law - 5 U.S.C. §§801-808

### New rules must be reported to Congress.

### The rule is put on hold for 60 days.

### Congress can pass a joint resolution blocking the rule, which must be signed by the president or, if he refuses, Congress must overrule his veto.

### Is this constitutional?

#### Why or why not?

## In the States

### Some state legislatures have asserted the right of legislative veto.

### This will be allowable based on the state constitutions, not the US Constitution.

### In general, state constitutions, as construed by state courts, allow more direct legislative control over agencies than does the US Constitution.

# Evaluation Questions

## The Structure of Congress

### What was the Great Compromise between the large and small states that lead to the organization of the Congress?

### How was this compromise intended to affect the politics of the two bodies?

#### How were Senate members initially chosen?

#### How did changing to direct election of Senators change the interests Senators represent?

### What are bicameralism and presentment?

### Why is bicameralism critical to the Great Compromise?

### What are the president's options on vetoing legislation and how may congress override a veto?

### What are the exclusive powers of the House of Representatives?

### What are the exclusive powers of the Senate?

### What is the only joint power?

## Background on immigration

### Must Congress treat all persons who come to the US the same? For example, are Haitians subject to the same immigration rules are Cubans?

#### Why isn’t this an equal protection problem?

#### If a person who is illegally in the US is accused of a crime, is she entitled to the same criminal due process rights as a US citizen?

## *Chadha*

### What was the legislative veto in Chadha?

### Who did the Court find was the natural adverse party in a case challenging the constitutionality of a statute?

### What was the constitutional argument that the court used to resolve Chadha?

### What has congress done to allow it to review proposed rules before they go into effect?

### What must congress do if wants to block a rule?