

Legislative Veto and Redelegation

In the American form of government, sovereignty lay with the people, not with a monarch. The Constitution is the sovereign's grant of authority to the branches of government. One branch of government cannot redelegate to another branch powers granted to it in the Constitution. Thus, congressional directions to the executive in the form of legislation should be narrow. If they are too broad, the courts could consider them to be *redelegation* and rule them unconstitutional.¹

As the government bureaucracy grew in size and complexity, Congress increasingly legislated in the abstract and left the details to executive agencies. This trend was particularly pronounced in the 1960s and 1970s. As a check on the regulatory agencies, Congress retained the authority to veto administrative regulations.

Administrative regulations can be seen, and are seen by many, to be a form of sub-legislation. The authority to develop regulations was a broad delegation from Congress that gave the executive branch greater authority over legislation. Congress relied on *concurrent resolution* to overrule disagreeable administrative regulations, what became known as the *legislative veto*. In *Immigration and Naturalization Service v. Chadha*,² the court ruled that the legislative veto was unconstitutional. Legislation would have to be passed by both houses of Congress and presented to the president for signature or veto, and a concurrent resolution is not submitted to the president.

As a result, some laws have been changed replacing concurrent resolution with joint resolution. Unlike a concurrent resolution, a joint resolution is submitted to the president for signature and possible veto. Congress can authorize with a simple majority, but once signed into law by the president, Congress will likely have to produce a supermajority to deauthorize the action. Presidents are unlikely to willingly give up power.

Nor can powers granted to Congress as a whole be redelegated to a part, for example, to a single house or to a committee. Thus, Congress's power to authorize war or the use of force cannot be delegated to a committee established for that purpose.

¹ Crenson and Ginsberg, *Presidential Power*, 343.

² Crenson and Ginsberg, *Presidential Power*, 294