

Obama's Objections to Committee Veto Misguided

BY LOUIS FISHER

On Dec. 23, while signing a budget bill, President Obama raised constitutional objections about committee vetoes. Does he understand their history and purpose? Probably not.

This type of legislative control has been around for more than seven decades. It helps the two branches reach political accommodations that satisfy both executive and legislative interests. Agencies do their best when requesting funds for the next fiscal year but cannot anticipate everything. Once the year begins, they may want to move money to emerging needs and away from what they initially asked for.

To keep faith with Congress, they notify committees of these changes and, in some cases, seek committee approval. This is one of many informal practices that permit government to function.

Obama said in his signing statement: "Numerous provisions of this bill purport to condition the authority of executive branch officials to spend or reallocate funds on the approval of congressional committees." Those procedures, he claimed, "are constitutionally impermissible forms of congressional aggrandizement in the execution of the laws."

He announced his administration would merely notify relevant committees before acting, treating their recommendations with "appropriate and serious consideration." It would then do as it pleased. Spending decisions "shall not be treated as dependent on the approval of congressional committees."

This argument is abstractly presented. It is also seriously misguided.

For constitutional support, Obama and his legal advisers rely on the Supreme Court's 1983 decision in *INS v. Chadha*, which struck down the legislative veto. In the future, the Court said, if Congress wants to control agency decisions it must comply with the full lawmaking process: action by both chambers and submission of a bill to the president for his signature or veto. Nothing in the court's opinion demonstrated any understanding or awareness of the kind of committee vetoes that Obama and other presidents have objected to.

In the 1940s, executive officials and Congressional committees reached an agreement that allowed agencies to shift money during a fiscal year to respond to new and pressing needs. They could reallocate funds if they notified and, in some cases, gained the approval of review committees. It is far-fetched and inaccurate for Obama to call this kind of executive-legislative accord "Congressional aggrandizement." Both branches recognized that agencies need greater flexibility in spending money. That process worked well before *Chadha*; it continues to function after it.

In 1984, an appellate court reviewed a statute that required a federal agency to submit a proposed action to a congressional committee. The court found no constitutional problem: "Indeed, our separation of powers makes such informal cooperation much more necessary than it would be in a pure system of parliamentary government."

The court cited Justice Jackson's language in *Youngstown Sheet & Tube Co. v. Sawyer*, the 1952 Steel Seizure Case. The art of governing under the U.S. Constitution, he said, "does not and cannot conform to judicial definitions of the power of any of its branches based on isolated clauses or even single Articles torn from context." Although the Constitution diffuses power to protect individual liberty, "it also contemplates that practice will integrate the dispersed powers into a workable government."

Executive departments have found it both practicable and necessary to submit certain proposals to committees. Agency budget manuals are very specific in identifying the actions that require committee approval.

If Obama really wanted to eliminate committee vetoes, he could send a memo to executive agencies and command them to delete from their budget manuals all references to committee approval. Up to now, both branches have understood that a rigid and doctrinaire application of *Chadha* would seriously damage executive and legislative needs. Agencies have both a moral and legal duty to comply with their written regulations.

Eliminating committee vetoes would deprive executive agencies of the flexibility to carry out complex duties. The federal government needs to perform effectively. Committee vetoes serve that purpose. There are many legitimate constitutional issues for Obama to fight over. Committee review of how agencies change some spending decisions throughout the fiscal year is not one.

During his presidential campaign, Obama promised to come to Washington, D.C., to solve problems, get things done, and lead the country out of political gridlock. He said leaders in Washington "seem incapable of working together in a practical, common-sense way." After three years in office, his administration should not invite and encourage new methods of obstruction.

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