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Don’t Rush the Court

By Neal Devins and Michael Fitts

Sometimes, we need to let a new law take a spin around the block before deciding whether it’s constitutional. In the case with the line-item veto, which a federal judge ruled unconstitutional last week, thanks to the statute’s demand for direct appeal, the case will probably go directly to the Supreme Court.

But why rush a final verdict so quickly? Rather than turn to the other branches of government to intervene, the White House should recognize that in this case, justice delayed may be justice delivered. They should urge the High Court to vacate the lower court’s decision on the ground that the issue is not yet ripe for review.

The Supreme Court needs time to sort out the impact of the new law, how the President will exercise this power, and how Congress will respond. The statute’s language is unclear. And once the law’s constitutionality may well turn on the role the President’s power to expand the size of the Supreme Court fits into this system of checks and balances. If, however, the court is not yet ripe for review, the Supreme Court might consider vacating the lower court’s decision on the ground that the issue is not yet ripe for review.

Such issues cannot be decided now. The president has already acted on bills that he believes are unconstitutional. Years will pass before the outcome of the 2016 presidential election, which could change the balance of power in Congress. The Court has a duty to resolve these issues, but it cannot do so without a clear understanding of the statute’s intent. The Supreme Court should not rush to review the line-item veto law. Congress has not yet had a chance to weigh in on the statute’s constitutionality, so the Court should not rush to review the statute’s constitutionality.

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Let the line item veto live a little.

some experience observing how the independent counsel system worked and didn’t work before upholding it in 1994 in Morrison v. Olson, we now know more about the law. People have warned the Supreme Court to wait decades to review the line-item veto, a few years wouldn’t hurt, and would only improve the quality of debate. Just as Democrats and Republicans talk over the new law, Congress is considering responses, and participants who are meticulously scrutinizing their activities, Republicans in Congress are just beginning to come to terms with how the line-item veto affects their pet projects.

This is an experience observing how the independent counsel system worked and didn’t work before upholding it in 1994 in Morrison v. Olson, we now know more about the law.