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Don’t Rush the Court

By Neal Devins and Michael Fitts

S
ome me, we need to let a new law take a spin around the block before deciding whether it is constitutional. But not 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 make a final verdict so quickly? Rather than move to the other end of the political spectrum, 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 Federal 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 remain unclear. And since the law’s constitutionality may well turn on whether the line-item veto affects the separation of powers, the Court should have a firm understanding of how the statute works before passing judgment.

Such issues cannot be decided now. President Clinton began to use this power 10 times last year, exercising only a few terms, and even reversing several of his initial decisions when powerful members of Congress objected. In turn, members of Congress have adjusted their own tactics to take into account the line-item veto.

Some experience observing how the independent counsel mandate worked and found that it didn’t work so well. So in 1994 in the Whitewater case, we were told we set a new standard for Whitewater.

Let the line item veto live a little.

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