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Don't Rush the Court

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By Neal Devins
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Sometimes, we need to let a new law take a spin around the block before deciding whether it works. And that is 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 render a final verdict so quickly? Rather than bow to the altar of judicial supremacy, Congress and 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 judicial 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 this veto power kicks our system out of whack, the Court ought to 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 last September ever so gingerly, vetoing only a few items, and even reversing several of his initial decisions when powerful members of Congress objected. In turn, members of Congress have adjusted their own tactics in light of the line-item veto. Only time will tell where the ultimate equilibrium will rest.

Paradoxically, the dispute over the line-item veto is taking place at the same time that there is increasing recognition that the Court may have acted too quickly in sorting out the constitutionality of another controversial power-sharing arrangement — the independent counsel statute.

Congress first passed that law in 1978, after the Watergate scandal. Opponents and supporters disagreed over whether it would give one branch too much power over the other — the same debate that was heard over the item veto. Although the Court had some experience observing how the independent counsel statute worked and didn't work before upholding it in 1988 in Morrison v. Olson, we now know more about the law.

Let the line item veto live a little.

While nobody wants 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 are now coming to terms with special prosecutors 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 that the Court should allow to play out and observe before it renders its ultimate, and final, judgment. □

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