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'Deeming' vs. the constitution

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By BETSY MCCAUGHEY



House Speaker Nancy Pelosi says she will ram the unpopular Senate health bill through the House without a vote. Article 1, Sect. 7 of the Constitution says she can't.

Many House Democrats are reluctant to go on record in support of the Senate bill. Pelosi's strategy is to "deem" it passed, go straight to a vote on a package of reconciliation "fixes" and then present both the Senate bill and reconciliation package to the president for signing.

In recent years, the US Supreme Court has twice struck down attempts to abbreviate the lawmaking process required by Article 1, Sect 7. Though it's been used before on less controversial legislation, Pelosi's tactic won't survive a constitutional challenge.

* In *INS v. Chadha* (1982), the high court ruled 7-2 that lawmaking must follow the steps laid out in the Constitution. Foreign student J.R. Chadha (from Kenya, ironically) convinced the Immigration and Naturalization Service to suspend his deportation. The House, acting without the Senate or president, voted to overturn the INS suspension via a "legislative veto" -- a device created by prior law to give either house of Congress the means to overturn certain executive decisions.

Chadha challenged the constitutionality of that arrangement and won. The Supreme Court ruled that the House's action was "legislative" in nature -- and declared that lawmaking is "subject to the procedural requirements of Art. 1, Sect. 7 for legislative action: passage by a majority of both houses and presentation to the president." Anything less is unconstitutional.

Article 1 states: "The votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the Journal of each House respectively."

The Chadha ruling applies to the pending health-care vote because the justices did more than strike down the "legislative veto." They broadly stated that *all* lawmaking

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must adhere to the "single, finely wrought and exhaustively considered procedure" laid out by the framers. No short cuts.

* In *Clinton v. City of New York* (1998), the court ruled that neither the president nor either house of Congress can depart from that "finely wrought procedure commanded by the Constitution to make a law."

The 1996 Line Item Veto Act had tried to grant the president "cancellation authority" to nullify provisions of laws already enacted that spent money or added to the discretionary budget. The intent was to enable the president to curb spending -- but intentions are irrelevant, the court stated in striking down the '96 act. "Cancellation" is repealing legislation -- and therefore *is* legislating.

And the Constitution permits only one method of legislating. Both houses of Congress and the president must participate in their prescribed ways. Article 1 procedures, the court said, are "the product of the great debates and compromises that produced the Constitution itself" and cannot be changed

In his dissent in *Chadha*, Justice Byron White argued that the framers' intent shouldn't preclude giving Congress "flexibility" -- just what Pelosi wants. But twice the court has ruled against it.

The Framers granted the House the "power of the purse" because they deemed it the truest representative of the people. Article 1, Sect. 7 provides that "all bills for raising revenue shall originate in the House." But the court has ruled repeatedly that bills with another purpose that incidentally raise revenue can originate in the Senate.

The Senate health bill raises \$500 billion in new taxes over the next decade -- yet no one in Washington insists that the measure ought to have originated in the House, the institution created to protect us from unreasonable taxation. And if Pelosi has her way, these taxes will be "deemed" enacted without any House vote at all.

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