

presented once again is whether the power of the Committee to disapprove a rule temporarily, or that of the Houses to do so permanently by joint resolution, is the equivalent of enacting law.

The case for a contravention of the presentment clauses has been forcefully put by R.W. Ginnane in his article entitled The Control of Federal Administration by Congressional Resolutions and Committees, 66 Harv. L. Rev., 569 (1953). Ginnane's view is that a disapproval is the equivalent of a policy decision, and therefore constitutes legislation. He reaches this conclusion by means of the following deduction:

"Since the Constitution plainly requires presidential participation in the exercise of legislative power, a power must be classified as non-legislative to justify its exercise by Congress or one of its branches in a way other than that prescribed." Ginnane, supra, at 593.

The contrary view is stated by Geoffrey S. Stewart, supra. His analysis is essentially three-fold:

(1) The veto power is supposed to protect the executive from legislative encroachment, rather than make the executive an arbiter of the legislature's wisdom.

(2) A disapproval does not permit the Legislature to set standards; neither does it require affirmative action by either the Executive or the Judiciary in their respective functions of executing and interpreting the law; hence it is not law making.

(3) The Executive initially had the opportunity to veto the legislation which established the legislative veto mechanism.

Stewart, supra. A similar analysis is developed in Cooper & Cooper, supra, who view the Legislative intent, as expressed in a committee disapproval, as a condition upon which the delegation of power to the agency depends in the first instance, i.e., the disapproval is not new legislation, but a guarantee that the original policy is fulfilled. This same view is adopted in Schwartz, Legislative Control of Administrative Rules and Regulations, 30 N.Y.U. L. Rev. 1031 (1955).

On balance, we find the latter view to be more persuasive. The very language of Article II, Sec. 17, confirms that its role is to protect the Executive, but not to grant it an enlarged role in the system of governance. Secondly, the disapproval vehicle is conditioned on meeting existing policy as delegated, rather than on changing that