

## 2) PRESENTMENT AND VETO

Although the President may propose legislation for congressional enactment, the President lacks the exclusive power of Congress to legislate.

### a) Presentment

Article I requires that if both the House and the Senate pass and reconcile related legislation, their final **bill must be provided** to the President for approval or veto. *See* U.S. Const. art. I, § 7, para. 2. The President's signature on the bill within 10 days completes its enactment into law as of its effective date.

### b) Veto

The President possesses the power to veto a bill simply by **not signing it** into law. The veto both disapproves of the legislation and prevents its enactment. Congress may **override the veto** only if both the House of Representatives and the Senate each obtain the votes of **two-thirds of their members** in favor of the legislation. In that event, the presentment requirement does not apply again, and the bill automatically becomes law on its effective date.

### c) Legislative Veto

The term **legislative veto** refers to the repeal by Congress of federal agency or presidential actions. In INS v. Chadha, the Supreme Court invalidated a federal law that provided for a legislative veto. The Supreme Court concluded that the law unconstitutionally allowed a joint committee of Congress to overrule decisions of an executive branch agency. A legislative veto violates the principle of **separation of powers** and its corollary system of checks and balances among the three branches of the federal government, as reflected in Article I, in Section 1 and Section 7 of the Constitution. Such a veto also is inconsistent with the constitutionally established procedures for **presentment and veto**, presented in Clauses 2 and 3 of Section 7. Thus, Congress cannot **legislatively obtain the power to veto** the President's execution of federal law.

### d) Line-Item Veto

The term line-item veto refers to the power of the President to nullify specific provisions of a bill, most often budget appropriations, without vetoing the entire bill. The laws of several states possess line-item veto provisions. The power is possessed by many state governors.

The President briefly obtained the power by the Line-Item Veto Act of 1996. However, that law was struck down as an unconstitutional Presidential exercise of legislative action.

## 3) THE DELEGATION DOCTRINE

### a) General Rule

Generally, Congress is the entity that conducts legislative actions. However, Congress may delegate limited **legislative authority** (i.e., legislative actions, but not the power to declare war) to members of the other branches, usually the executive branch or even to the President.

b) Intelligible Standards

When Congress is permitted to delegate its authority, it must provide the delegate with **intelligible standards and guidelines**. The Supreme Court traditionally takes a deferential approach to applying the intelligible standards requirement. Thus, usually most delegations of authority have been permitted.

The establishment of **administrative agencies** by enabling acts of Congress may be considered an exception to the rule preventing the combined delegation of legislative, executive, and judicial powers.

4) EXECUTIVE, LEGISLATIVE, AND JUDICIAL IMMUNITIES

a) Executive Immunity

The President is protected by **absolute immunity** for civil actions seeking money damages arising from the President's conduct while **in office**. The immunity does not apply to the President's conduct **prior to taking office**. The Supreme Court, in U.S. v. Nixon, held that a president and members of the executive branch are not immune from judicial process, such as subpoenas seeking information about executive branch affairs. Indeed, Congress can hold executive branch officials in contempt for failing to comply with a subpoena. The Supreme Court further ruled that a general and **qualified privilege** exists regarding the "confidentiality of Presidential communications in the exercise of Article II powers."

b) Legislative Immunity

The Speech and Debate Clause of the U.S. Constitution, states that "for any Speech or Debate in either House [all Congress members] shall not be questioned in any other Place." *See* U.S. Const. art. I, § 6. That provision applies to the **official activities** of the members of Congress while they participate in the **legislative function**. It generally protects them by making their communications in that capacity privileged from **civil or criminal suit, including grand jury proceedings**. The immunity does not apply to the communication by a member:

- i) that occurred **prior to** taking office;
- ii) that involved **political functions** during the member's term of office; or
- iii) **after** the member leaves office.

The **staff of members** of Congress also may assert the privilege for their conduct that occurs in the scope of their work on behalf of their member of Congress.

c) Judicial Immunity