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Process Gas Consumers Group Vs. Consumer Energy Council

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Court : US Supreme Court

Decided On : 1983

Appeal No. : 463 U.S. 1216

Appellant : Process Gas Consumers Group

Respondent : Consumer Energy Council

Judgement :

PROCESS GAS CONSUMERS GROUP v. CONSUMER ENERGY COUNCIL - 463 U.S. 1216 (1983)
U.S. Supreme Court PROCESS GAS CONSUMERS GROUP v. CONSUMER ENERGY COUNCIL , 463 U.S. 1216 (1983)

463 U.S. 1216

PROCESS GAS CONSUMERS GROUP, et al., appellants, v. CONSUMER ENERGY COUNCIL OF AMERICA et al

INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA, et al., appellants, v. CONSUMER ENERGY COUNCIL OF AMERICA et al

PETROCHEMICAL ENERGY GROUP, appellant, v. CONSUMER ENERGY COUNCIL OF AMERICA et al

AMERICAN GAS ASSOCIATION, appellant, v. CONSUMER ENERGY COUNCIL OF AMERICA et al

UNITED STATES SENATE, petitioner, v. CONSUMER ENERGY COUNCIL OF AMERICA et al

UNITED STATES HOUSE OF REPRESENTATIVES, petitioner, v. CONSUMER ENERGY COUNCIL OF AMERICA et al

UNITED STATES SENATE, appellant, v. FEDERAL TRADE COMMISSION et al

UNITED STATES HOUSE OF REPRESENTATIVES, appellant, v. FEDERAL TRADE COMMISSION et al
No. 81-2020 No. 81-2008 No. 81-2151 No. 81-2171 No. 82-177 No. 82-209 No. 82- 935 No. 82-1044

Supreme Court of the United States July 6, 1983 Rehearing Denied Sept. 8, 1983. See U.S..

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Justice WHITE, dissenting.

The principal issue in these cases is the constitutionality of the legislative veto as applied to agency rulemaking. Given the Court's recent decision in Immigration and Naturalization Service v. Chadha, 462 U.S. 919 ___ (1983), the summary affirmance of the Court of Appeals' decisions striking the veto as unconstitutional is hardly surprising. These cases illustrate the constitutional myopia of the Chadha reasoning as applied to independent regulatory agencies and cast further light on the destructiveness of the Chadha holding.

In Process Gas Consumers v. Consumer Energy Council of America, the Court of Appeals invalidated the one-house legislative veto provision of the Natural Gas Policy Act of 1978 (NGPA), contained in 202(c) of the Act. 15 U.S.C. 3342(c) (1976 and Supp. IV). The NGPA was a response to the need for financial

incentives to encourage the production of natural gas for the interstate market. The Act was a compromise, reached only after months of impasse between the two Houses over the optimal means of deregulating natural gas prices while preventing excessive fuel bills for consumers and industry. Congress finally settled on a phased deregulation of natural gas prices, with a system of incremental pricing to ease the transition. Specifically, the compromise agreed to by the Conference Committee provided for an initial experiment with incremental pricing for a small class of industrial users, while authorizing the Federal Energy Regulatory Commission to propose expansion of incremental pricing to other industrial users at a later time. This proposal would be submitted to Congress and would become effective unless disapproved by either House. The veto provision was central to this accommodation, because it allowed the Congress to observe the effects of the initial phase of incremental pricing without committing the nation to a broader program which, it was feared, would drive industrial gas users to oil,

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increasing the demand for imported oil, and raising the cost of gas for residential consumers. The Conference solution allowed the House and Senate to reach agreement and the NGPA was enacted. [Footnote 1]

In United States Senate v. Federal Trade Commission, the Court of Appeals struck down 21(a) of the Federal Trade Commission Improvements Act of 1980, which provides that an FTC trade regulation rule shall become effective unless both Houses of Congress disapprove it. The Act authorizes the Commission to issue trade regulation rules which define unfair or deceptive acts or practices in or affecting commerce. 15 U.S.C . 57a(1)(B) (Supp. IV 1980). For three years, Congress debated the breadth of the Commission's rulemaking authority, noting that the FTC could, pursuant to the Act, "regulate virtually every aspect of America's commercial life." 124 Cong.Rec. 5012 (1978) (Rep. Broyhill). The two-House veto pr vision was settled upon as a means of allowing Congress to study and review the broad and important policy pronouncements of the Commission.

I cannot agree that the legislative vetoes in these cases violate the requirements of Article I of the Constitution. Where the veto is placed as a check upon the actions of the independent regulatory agencies, the Article I analysis relied upon in Chadha has a particularly hollow ring. In Buckley v. Valeo, 424 U.S. 1 , 284-285 and n. 30, 757 and n. 30 (1976), I set forth my belief that the legislative veto as applied to rules promulgated by an independent regulatory agency fully comports with the Constitution.

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"[F]or a regulation to become effective, neither house need approve it, pass it, or take any action at all. The regulation becomes effective by nonaction. This no more invades the President's powers than does a regulation not required to be laid before Congress. Congressional influence over the substantive content of agency regulation may be enhanced, but I would not view the power of either House to disapprove as equivalent to legislation or to an order, resolution, or vote requiring the concurrence of both Houses. . . . Disapproval nullifies the suggested regulation and prevents the occurrence of any change in the law. The regulation is void. Nothing remains on which the veto power could operate. It is as though a bill passed in one house and failed in another."

The Court's opinion in Chadha has not convinced me otherwise. Congress, with the President's consent, characteristically empowers the agencies to issue regulations. These regulations have the force of law without the President's concurrence; nor can he veto them if he disagrees with the law that they make. The President's authority to control independent agency law-making, which on a day-to-day basis is non-existent, could not be affected by the existence or exercise of the legislative veto . To invalidate the device, which allows Congress to maintain some control over the law-making process, merely guarantees that the independent agencies, once created, for all practical purposes are a fourth branch of the government not subject to the direct control of either Congress or the executive branch. I cannot believe that the Constitution commands such a result. For these reasons and for those expressed in my dissenting opinion in Immigration and Naturalization Service v. Chadha, I respectfully dissent. Footnotes

Footnote 1 This case also presents the important question of whether the legislative veto is severable from the authorization for FERC to issue an expanded interim pricing rule. There is no severability clause in the NGPA, an omission which itself suggests the inseverability of the provision, see Carter v. Carter Coal Co., 298 U.S. 238, 313 , 873 (1936), and much of the legislative history suggests that Congress would not have granted the Commission unfettered rulemaking authority. See, e.g., 124 Cong.Rec. S15222 (daily ed. Sept. 15, 1978) (comments of Senator Percy).

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