25.4 CONSTITUTIONALITY OF SUSPENSION OF RULES

Until the statutory authority of the LCRAR to suspend an administrative rule was repealed in 1997,[1] there was significant debate over the constitutionality of this authority. Much of that debate turned on the implications of the U.S. Supreme Court holding in *Immigration & Naturalization Service v. Chadha,*[2] that the U.S. House of Representatives could not overturn a decision of the immigration and naturalization service by vote of a committee.

In its opinion, the Court held that Congress could act only through the bill enactment procedure set forth in article II of the U.S. Constitution. Thus, if Congress wishes to overturn an action of the executive branch, it can do so only if both houses pass a bill that is signed by the president.[3] Several state courts have made similar rulings with respect to state regulatory vetoes; some occurred before the *Chadha* decision,[4] others have occurred since.[5]

The statutory authority of the LCRAR to suspend an administrative rule was repealed in 1997.[6] Prior to that time, LCRAR staff opined that the suspension powers of the LCRAR were structured in a way that avoided the defects identified in *Chadha* and similar cases. First, the suspension was only temporary. The rule would become effective again if the legislature defeated the bill that the commission introduced to repeal the rule permanently. The rule will become effective again if the legislature defeats the bill that the commission introduces to repeal the rule permanently.[7]

The requirement that permanent repeal of the rule take place through the bill enactment process assured that both houses of the legislature and the governor had input. Because a bill must be presented to the governor in order to become law, the LCRAR suspension process avoided another alleged defect identified in *Chadha*—that is, failure to provide for presentment of legislative action to the executive for approval or veto. The governor's office could influence the outcome of the commission's actions by letting it be known during the suspension proceedings that a bill to repeal the rule would be vetoed. The commission would then need to determine if there was sufficient support in the legislature to override a veto. Thus, the usual checks and balances provided for by the Constitution were, in the staff's opinion present in the LCRAR suspension process.[8]

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1 *See* 1997 Minn. Laws ch. 98, § 17, at 718 (repealing MINN. STAT. §§ 3.842, subd. 4, .844, .845).

2 462 U.S. 919 (1983).

3 *Id.* at 955-59.

4 *E.g.*, Alaska v. A.L.I.V.E. Voluntary, 606 P.2d 769, 770 (Alaska 1980); Ralovey v. Pac, 183 Conn. 313, 322-32, 439 A.2d 349, 354-55 (1981); Opinion of the Justices, 121 N.H. 552, 431 A.2d 783 (1981); New Jersey v. Byrne, 90 N.J. 376, 378, 448 A.2d 438, 439 (1981), *superseded by statute as stated in* Kimmelman v. Burgio 204 N.J. Super. 44, 47-48, 970 A.2d 890, 892 (1985); State *ex rel.* Barker v. Manchin, 167 W. Va. 155, 166-68, 279 S.E.2d 622, 630-31 (1981).

5 State *ex rel.* Stephan v. Kansas House, 236 Kan. 45, 53-54, 687 P.2d 622, 631 (1984); Legislative Research Comm'n v. Brown, 664 S.W.2d 907, 913-14 (Ky. 1984).

6 *See* 1997 Minn. Laws ch. 98, § 17, at 718 (repealing MINN. STAT. §§ 3.842, subd. 4, .844, .845).

7 For full discussion of legislative vetoes in other states, see BONFIELD, STATE ADMINISTRATIVE RULEMAKING, § 8.3.2, at 497-507 (1986) and 1993 SUPPLEMENT, at 189-96.

8 A contrary viewpoint on constitutionality can be found in Goldberg, *Comment on the Constitutionality of the LCRAR*, AD. L. NEWS 4 (June 1984); *see also* BONFIELD, *supra* note 7, at 184-200 (discussing review by legislature and discussion of administrative rules review committees).