

Powers Granted to Congress

Article I, Section 8 contains 18 clauses which grant powers to Congress: law and collect taxes, provide for the defense of the country, borrow money or credit of the U.S., regulate commerce with foreign nations and among the states, regulate immigration and bankruptcy, establish post offices and post roads, control the issuance of patents and copyrights, and declare war.

Scope of Immunity

Only legislative acts are protected: (1) speaking and debating on the floor of the House and the Senate, (2) voting, (3) participating in committee hearings, and (4) preparing committee reports. Political acts are not immune: (1) providing services to constituents, (2) helping private citizens to obtain government contracts or meet with government agencies, and (3) communicating directly with the public, whether by press releases, press conferences or speeches made outside of Congress (i.e. *U.S. v. Brewster*).

Unconstitutional Delegation of Power

A congressional delegation without adequate standards - one that allowed executive officials to make basic policy - would constitute a transfer of legislative power to the executive branch and would be unconstitutional. It was not until 1935 that the Court invalidated a congressional delegation. The court said that congressional delegation of lawmaking power to the executive branch or administrative agencies were impermissible because they were unduly broad.

Unconstitutional Delegation of Power (cont)

[*Panama Refining Co v. Ryan* And *Schechter Poultry v. U.S.*].

Enforcement of Investigatory Power

The principal method for enforcing the congressional investigative power is punishable by contempt.

Presidential Impeachment

Only 3 presidents have been subject to impeachment efforts - Andrew Johnson, Richard Nixon, and William Clinton. Johnson was impeached by the House but escaped conviction by the Senate by one vote. Nixon resigned before the House could vote on impeachment. And Clinton was impeached on 12/19/88 by the House of Representatives but the Senate did not reach the 2/3 votes necessary to convict (acquitted).

Proposing Amendments

Two methods: (1) only method used - 2/3 vote in each house, (2) Constitutional convention called in response to 2/3 of the state legislatures (Congress acting under the necessary and proper clause).

Necessary and Proper Clause

Congress shall "make all laws which shall be necessary and proper for carrying into execution the enumerated powers and all other powers vested by the Constitution in the government. This clause provides the basis for Congress' implied powers. Defined by Chief Justice Marshall in *McCulloch v. Maryland*.

Legislative Veto

Legislative veto is a congressional power to halt an executive initiative or proposal by a vote of one or both Houses or by a congressional committee. It is the requirement that an executive decision must lie before Congress for 60 days or less before it can take effect. Congress reserved this right for itself and it is not signed by the president (the president is bypassed in this process). In 1983, the SC declared the legislative veto unconstitutional because it violated separation of powers.

Covered v. Not Covered

Besides members of Congress, the immunity also covers aids who engage in acts that would be immune if performed by a legislator (*Gravel v. U.S.*). The Speech and Debate Clause does not extend to state legislators who are prosecuted for violations of federal law.

Scope of Investigations

Congress may compel/subpoena witnesses and order that the witnesses answer questions. Witnesses may refuse to answer questions, citing privilege against self incrimination, interference with first amendment rights, and lack of due process safeguards in hearing procedures. The power to investigate is limited to inquiries of which the particular House has jurisdiction. Neither House may inquire into the private affairs of citizens. Congress' investigatory powers extend to all matters upon which Congress could choose to act..



Ratifying Amendments

(1) Approval by 3/4 of the state legislatures, (2) approval by specially called ratifying conventions in 3/4 of the states (used only for the 21 amendment which repealed the 18th amendment - prohibition). Congress uses the necessary and proper clause to determine the time limit, method, and determine when amendments have been adopted. Congress determines which method is used.

Limits on Impeachable Offenses

Treason, bribery, and other high crimes and misdemeanors (a subject of great dispute) are the only impeachable offenses.

Constitutional Amendments

Each amendment must be proposed and ratified.

Immigration and Naturalization Service v. Chadha

The Court held that the legislative veto as unconstitutional and found that the provision for the Immigration and Nationality Act allowing one House of Congress to veto executive branch decisions was a violation of the separation of powers doctrine. It violated bicameralism, encroached on the executive branch, and the presentation requirement.

Delegation of Power

From time to time, congress has seen fit to delegate some of its powers to the executive branch or some administrative agency. One of the first delegations of congressional power was upheld in *Brig Aurora v. U.S.* - a statute authorizing the president to lift restrictions on trade with France and Great Britain if those nations ceased interfering with Am. shipping.

Delegation of Power (cont)

In upholding this statute, the court recognized that the Constitution imposes a limitation on congressional delegations: whatever powers are surrendered, the determination of the basic policy must remain with Congress..

Impeachment

Members of the executive and judicial branches can be removed from office upon impeachment by a majority vote in the House - a House vote to impeach is similar to a grand jury indictment - to be accused of a crime, it is not a conviction, but a necessary precondition to a trial. The actual impeachment trial occurs in the Senate and a 2/3 vote of those senators present is required to convict. In the case of impeachment of a President, the Chief Justice presides. Impeachment and conviction carry purely political penalties - removal from office and eligibility for future office..

Non-Legislative Powers

The Constitution assigns to Congress the powers of impeachment and the proposal and ratification of constitutional amendments.

Congressional Investigations

Congressional investigations have been implied from the power to legislate. There is no constitutional provision expressly conferring upon Congress the power to make investigations.

Speech and Debate Clause

Members of Congress are protected from: (1) civil or criminal suits relating to their legislative actions, (2) grand jury investigations relating to these actions. The rationale for this clause ensures that congressmen are not distracted from their duties by being calling into Court to defend their actions

Congressional Immunity

Article I, Section 6, Clause 1 provides that members of Congress "...shall not be questioned in any other place...for any speech or debate in either House."