

Scope of Congressional Oversight and Investigative Power With Respect to the Executive Branch

Congressional power to conduct inquiries and to exercise oversight respecting the Executive Branch is broad and well-established. This power is not unlimited, however. Its use must be confined to inquiries concerning the administration of existing laws or the determination of whether new or additional laws are needed.

Congress may not conduct investigative or oversight inquiries for the purpose of managing Executive Branch agencies or for directing the manner in which the Executive Branch interprets and executes the laws.

The Supreme Court's decisions in *Buckley v. Valeo*, 424 U.S. 1 (1976) (per curiam), and *INS v. Chadha*, 462 U.S. 919 (1983), establish an area of executive authority in the interpretation and implementation of statutes. Congress may not take action, including action in furtherance of its inquiry and oversight powers, that interferes with that executive authority, except through the enactment of legislation in full compliance with constitutional requirements.

March 22, 1985

MEMORANDUM OPINION FOR THE ATTORNEY GENERAL

This responds to your request for a brief discussion of the proper scope of Congress' power of inquiry and oversight with respect to the Executive Branch.

It is beyond dispute that Congress may conduct investigations in order to obtain facts pertinent to possible legislation and in order to evaluate the effectiveness of current laws.¹ This power to obtain information has long been viewed as an essential attribute of the power to legislate, and was so treated in the British Parliament and in the colonial legislatures in this country. See *McGrain v. Daugherty*, 273 U.S. 135, 161, 174-77 (1927); see generally Landis, *Constitutional Limitations on the Congressional Power of Investigation*, 40 Harv. L. Rev. 153 (1926). Although the Constitution does not explicitly grant any power of inquiry to Congress, Congress asserted such a right shortly after the adoption of the Constitution. In 1792, the House of Represen-

¹ In exercising its oversight function, Congress may also adopt by plenary legislation "report and wait" provisions requiring the Executive to report to Congress in advance of taking certain actions. See, e.g., *INS v. Chadha*, 462 U.S. 919, 935 n.9 (1983). Congress' power in this area is not unlimited. Legislation purporting to render inoperative the Executive's inherent constitutional powers, such as those related to the President's role as Commander-in-Chief, for a fixed period of time would raise issues decidedly different and more difficult to resolve than situations in which Congress legislates "waiting" periods with regard to the exercise of statutory power by the Executive. See generally *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 636-38 (1952) (Jackson, J. concurring).

Development Of Congressional Investigative Power

Louis Fisher



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