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Legal Sidebar

The Army Clause, Part 3: Appropriations, Conscription, and War Materials

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This Legal Sidebar is the third in a five-part series that discusses the Constitution's Army Clause, which allows for the federal government to raise and support armies while also allowing for congressional control through the appropriations process. Because the Army Clause provides Congress with an essential element of the United States' suite of war powers, understanding the Army Clause may assist Congress in its legislative activities.

This Sidebar post discusses interpretations of the Army Clause in connection with appropriations, conscription, and war materials. Other Sidebars in this series discuss the Clause's historical backdrop; drafting and ratification history; role in individual rights cases; and connection with principles of federalism. Additional information on this and related topics is available at the Constitution Annotated.

Time Limits on Army Appropriations

Although the Army Clause provides that no appropriation of money to raise and support armies "shall be for a longer term than two years[,]" the executive branch has interpreted this restriction to allow the Army to make investments in military equipment and supplies using appropriations available for more than two years. In 1904, the executive branch addressed whether it would violate the two-year appropriations restriction by contracting to pay patent royalties in exchange for construction of guns and other equipment if the royalty payment might continue beyond two years. The Solicitor General opined that the contract would be lawful because the Army Clause's appropriations restriction is "confined to appropriations to raise and support armies in the strict sense of the word 'support,' and does not extend to appropriations for the various means which an army may use in military operations, or which are deemed necessary for common defense." The Solicitor General reasoned that expenditures to "arm, equip, and render effective" armies that Congress has previously raised are not subject to the two-year restriction.

In 1948, the Attorney General relied on the 1904 opinion in concluding that Congress could appropriate funds for aircraft and aeronautical equipment procurement beyond two years. Congressional committees have also advanced the view that the Army Clause's appropriation restriction does not apply to defense articles or equipment. The Supreme Court has not addressed the constitutionality of this interpretation of the appropriations restriction, although it has addressed the scope of Congress's power under the Army Clause in other contexts.

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Congressional Authority over Conscription and War Materials

The Supreme Court has often described Congress's power under the Army Clause in expansive terms, and it has rejected a variety of claimed limits on congressional power to raise and support armies. One early, high-profile dispute concerning the Army Clause arose when Congress enacted a compulsory draft law after the United States entered World War I. In the *Selective Draft Law Cases*, a group of individuals prosecuted for failing to register for the draft argued that the federal government could only call forth volunteer enlistments and that it lacked the constitutional power to compel enforced military duty through a draft. The Supreme Court rejected this position in strong terms, describing it as "so devoid of foundation that it leaves not even a shadow of ground upon which to base the conclusion." The Court was similarly dismissive of the claim that compulsory military service violated the Thirteenth Amendment's prohibition on "involuntary servitude," which the Court stated was "refuted by its mere statement."

The *Selective Draft Law Cases* also addressed the Army Clause's relationship with the Militia Clauses. In Article 1, Section 8, Clause 15—the first of two Militia Clauses—the Constitution allows Congress to provide for calling forth the militia to execute federal law, suppress insurrections, and repel invasions. The draftees in the *Selective Draft Law Cases* argued that congressional authority to raise armies was limited to the same three purposes, but the Supreme Court interpreted Congress's power under the Army Clause as distinct from its power over militias. Because the two powers operated independently, the Militia Clauses did not qualify or restrict congressional authority under the Army Clause, the Court held.

With congressional authority to *raise* armies through conscription was firmly established in the *Selective Draft Law Cases*, the Supreme Court's next major Army Clause case addressed congressional power to *support* armies by providing supplies and equipment. In *Lichter v. United States* the Court addressed a constitutional challenge to the Renegotiation Act, which allowed the government to renegotiate contracts for war supplies and to recoup excessive process. In upholding the statute as a valid exercise of Congress's war powers, the Supreme Court elaborated on the Army Clause and described its authority as "broad rather than restrictive." The Court viewed the Renegotiation Act as part of the United States' policy to rely partly on private industry to ensure production of equipment and supplies necessary to the war effort. Just as Congress has broad power to conscript individuals under the Army Clause, the *Lichter* Court explained, congressional authority to ensure that military has the material needed to wage war successfully is "no less clear and sweeping."

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