

Sec. 1—The Congress

Legislative Powers

Perhaps refining the delegation doctrine, at least in cases where Fifth Amendment due process interests are implicated, the Court held that a government agency charged with the efficient administration of the Executive Branch could not assert the broader interests that Congress or the President might have in barring lawfully resident aliens from government employment. The agency could assert only those interests Congress charged it with promoting, and if the action could be justified by other interests, the office with responsibility for promoting those interests must take the action.¹⁹⁰

CONGRESSIONAL INVESTIGATIONS

Source of the Power to Investigate

No provision of the Constitution expressly authorizes either house of Congress to pursue investigations and compel testimony in order to exercise its legislative functions. But such a power was frequently exercised by both the British Parliament and the American colonial assemblies prior to the adoption of the Constitution.¹⁹¹ Indeed, it was asserted by the House of Representatives as early as 1792, when it appointed a committee to investigate the defeat of General St. Clair and his army by the Indians in the Northwest and empowered it to “call for such persons, papers, and records, as may be necessary to assist their inquiries.”¹⁹²

The Court has long since established that because such investigatory power is so essential to the legislative function it is to be implied from the general vesting of legislative power in Congress. “We are of the opinion,” wrote Justice Van Devanter for a unanimous Court, “that the power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function. . . . A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information—which not infrequently is true—recourse must be had to others who possess it. Experience has taught that mere requests for such information often are unavailing, and also that information which is volunteered is not always accurate or complete; so some means of com-

¹⁹⁰ *Hampton v. Mow Sun Wong*, 426 U.S. 88 (1976) (5-to-4 decision). The regulation was reissued by the President, Exec. Order No. 11935, 3 C.F.R. 146 (1976), reprinted in 5 U.S.C. § 3301 (app.), and sustained in *Vergara v. Hampton*, 581 F.2d 1281 (7th Cir. 1978).

¹⁹¹ Landis, *Constitutional Limitations on the Congressional Power of Investigation*, 40 HARV. L. REV. 153, 159–166 (1926); M. DIMOCK, CONGRESSIONAL INVESTIGATING COMMITTEES ch. 2 (1929).

¹⁹² 3 ANNALS OF CONGRESS 490–494 (1792); 3 A. HINDS’ PRECEDENTS OF THE HOUSE OF REPRESENTATIVES 1725 (1907).