

Sec. 8—Powers of Congress

Cl. 7—Post Office

denying the right of the states to prevent the importation of alcoholic beverages from other states.¹³⁷⁴

Power To Prevent Harmful Use of the Postal Facilities

In 1872, Congress passed the first of a series of acts to exclude from the mails publications designed to defraud the public or corrupt its morals. In the pioneer case of *Ex parte Jackson*,¹³⁷⁵ the Court sustained the exclusion of circulars relating to lotteries on the general ground that “the right to designate what shall be carried necessarily involves the right to determine what shall be excluded.”¹³⁷⁶ The leading fraud order case, decided in 1904, held to the same effect.¹³⁷⁷ Pointing out that it is “an indispensable adjunct to a civil government,” to supply postal facilities, the Court restated its premise that the “legislative body in thus establishing a postal service may annex such conditions . . . as it chooses.”¹³⁷⁸

Later cases first qualified these sweeping assertions and then overturned them, holding government operation of the mails to be subject to constitutional limitations. In upholding requirements that publishers of newspapers and periodicals seeking second-class mailing privileges file complete information regarding ownership, indebtedness, and circulation and that all paid advertisements in the publications be marked as such, the Court emphasized that these provisions were reasonably designed to safeguard the second-class privilege from exploitation by mere advertising publications.¹³⁷⁹ Chief Justice White warned that the Court by no means intended to imply that it endorsed the Government’s “broad contentions concerning . . . the classification of the mails, or by the way of condition”¹³⁸⁰ Again, when the Court sustained an order of the Postmaster General excluding from the second-class privilege a newspaper he had found to have published material in contravention of the Espionage Act of 1917, the claim of absolute power in Congress to withhold the privilege was sedulously avoided.¹³⁸¹

¹³⁷⁴ *Bowman v. Chicago & Nw. Ry.*, 125 U.S. 465 (1888); *Leisy v. Hardin*, 135 U.S. 100 (1890).

¹³⁷⁵ 96 U.S. 727 (1878).

¹³⁷⁶ 96 U.S. at 732.

¹³⁷⁷ *Public Clearing House v. Coyne*, 194 U.S. 497 (1904), followed in *Donaldson v. Read Magazine*, 333 U.S. 178 (1948).

¹³⁷⁸ 194 U.S. at 506.

¹³⁷⁹ *Lewis Publishing Co. v. Morgan*, 229 U.S. 288 (1913).

¹³⁸⁰ 229 U.S. at 316.

¹³⁸¹ *United States ex rel. Milwaukee Social Democratic Pub. Co. v. Burleson*, 255 U.S. 407 (1921). See also *Hannegan v. Esquire*, 327 U.S. 146 (1946), denying the Post Office the right to exclude *Esquire Magazine* from the mails on grounds of the poor taste and vulgarity of its contents.