

Sec. 1—The Congress

Legislative Powers

sible, the constitutional requirements of delegation have been fulfilled.¹³⁷ This requirement may be met through the provisions of the Administrative Procedure Act (ARA),¹³⁸ but where that act is inapplicable or where the Court sees the necessity for exceeding its provisions, due process can supply the safeguards of required hearing, notice, supporting statements, and the like.¹³⁹

Conflict Between State or Federal Statutes and Delegated Authority.— A rule or regulation properly promulgated under authority received from Congress is treated as law, and under the Supremacy Clause of the Constitution can preempt state law.¹⁴⁰ Further, in exercising a delegated power, the President or another officer may effectively suspend or rescind a law passed by Congress. Early cases sustained contingency legislation giving the President power, upon the finding of certain facts, to revive or suspend a law,¹⁴¹ and the President's power to raise or lower tariff rates equipped him to alter statutory law.¹⁴² The Court in *Opp Cotton Mills v. Administrator*¹⁴³ upheld Congress' decision to delegate to the Wage and Hour Administrator of the Labor Department the authority to establish a minimum wage in particular industries greater than the statutory minimum but no higher than a prescribed figure. Congress has not often expressly addressed the issue of repeals or supersessions, but in authorizing the Supreme Court to promulgate rules of civil

¹³⁷ *Yakus v. United States*, 321 U.S. 414, 426; *Skinner v. Mid-America Pipeline Co.*, 490 U.S. 212, 218 (1989); *American Light & Power Co. v. SEC*, 329 U.S. 90, 107, 108 (1946); *Opp Cotton Mills v. Administrator*, 312 U.S. 126, 144 (1941). It should be remembered that the Court has renounced strict review of economic regulation wholly through legislative enactment, forsaking substantive due process, so that review of the exercise of delegated power by the same relaxed standard forwards a consistent policy. *E.g.*, *Ferguson v. Skrupa*, 372 U.S. 726 (1963); *Williamson v. Lee Optical Co.*, 348 U.S. 483 (1955).

¹³⁸ Act of June 11, 1946, 60 Stat. 237, 5 U.S.C. §§ 551–559. In *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969), six Justices agreed that a Board proceeding had been in fact rule-making and not adjudication and that the APA should have been complied with. The Board won the particular case, however, because of a coalescence of divergent views of the Justices, but the Board has since reversed a policy of not resorting to formal rule-making.

¹³⁹ *E.g.*, *Goldberg v. Kelly*, 397 U.S. 254 (1970); *Wisconsin v. Constantineau*, 400 U.S. 433 (1971).

¹⁴⁰ *City of New York v. FCC*, 486 U.S. 57, 63–64 (1988); *Louisiana PSC v. FCC*, 476 U.S. 355, 368–69 (1986); *Fidelity Fed. Savings & Loan Ass'n v. de la Cuesta*, 458 U.S. 141, 153–54 (1982).

¹⁴¹ *E.g.*, *The Brig Aurora*, 11 U.S. (7 Cr.) 382 (1813).

¹⁴² *E.g.*, *J. W. Hampton, Jr. & Co. v. United States*, 276 U.S. 394 (1928); *Field v. Clark*, 143 U.S. 649 (1892).

¹⁴³ 312 U.S. 126 (1941).