

Sec. 8—Powers of Congress

Cls. 11, 12, 13, and 14—War; Military Establishment

ations previously detailed, the Court has refused to allow enlisted men and officers to sue to challenge or set aside military decisions and actions.¹⁵⁴⁴

Congress has a plenary and exclusive power to determine the age at which a soldier or seaman shall serve, the compensation he shall be allowed, and the service to which he shall be assigned. This power may be exerted to supersede parents' control of minor sons who are needed for military service. Where the statute requiring the consent of parents for enlistment of a minor son did not permit such consent to be qualified, their attempt to impose a condition that the son carry war risk insurance for the benefit of his mother was not binding on the government.¹⁵⁴⁵ Because the possession of government insurance payable to the person of his choice is calculated to enhance the morale of the serviceman, Congress may permit him to designate any beneficiary he desires, irrespective of state law, and may exempt the proceeds from the claims of creditors.¹⁵⁴⁶ Likewise, Congress may bar a state from taxing the tangible, personal property of a soldier, assigned for duty in the state, but domiciled elsewhere.¹⁵⁴⁷ To safeguard the health and welfare of the armed forces, Congress may authorize the suppression of bordellos in the vicinity of the places where forces are stationed.¹⁵⁴⁸

Trial and Punishment of Offenses: Servicemen, Civilian Employees, and Dependents

Under its power to make rules for the government and regulation of the armed forces, Congress has set up a system of criminal

¹⁵⁴⁴ *Chappell v. Wallace*, 462 U.S. 296 (1983) (enlisted men charging racial discrimination by their superiors in duty assignments and performance evaluations could not bring constitutional tort suits); *United States v. Stanley*, 483 U.S. 669 (1987) (officer who had been an unwitting, unconsenting subject of an Army experiment to test the effects of LSD on human subjects could not bring a constitutional tort action for damages). These considerations are also the basis of the Court's construction of the Federal Tort Claims Act as not reaching injuries arising incident to military service. *Feres v. United States*, 340 U.S. 135 (1950). In *United States v. Johnson*, 481 U.S. 681 (1987), four Justices urged reconsideration of *Feres*, but that has not occurred.

¹⁵⁴⁵ *United States v. Williams*, 302 U.S. 46 (1937). See also *In re Grimley*, 137 U.S. 147, 153 (1890); *In re Morrissey*, 137 U.S. 157 (1890).

¹⁵⁴⁶ *Wissner v. Wissner*, 338 U.S. 655 (1950); *Ridgway v. Ridgway*, 454 U.S. 46 (1981). In the absence of express congressional language, like that found in *Wissner*, the Court nonetheless held that a state court division under its community property system of an officer's military retirement benefits conflicted with the federal program and could not stand. *McCarty v. McCarty*, 453 U.S. 210 (1981). See also *Porter v. Aetna Casualty Co.*, 370 U.S. 159 (1962) (exemption from creditors' claims of disability benefits deposited by a veteran's guardian in a savings and loan association).

¹⁵⁴⁷ *Dameron v. Brodhead*, 345 U.S. 322 (1953). See also *California v. Buzard*, 382 U.S. 386 (1966); *Sullivan v. United States*, 395 U.S. 169 (1969).

¹⁵⁴⁸ *McKinley v. United States*, 249 U.S. 397 (1919).