

Sec. 8—Powers of Congress

Cl. 7—Post Office

ing the use and upkeep of the portion of the road lying in the state.¹³⁶⁸ The debate on the question was terminated in 1876 by the decision in *Kohl v. United States*,¹³⁶⁹ sustaining a proceeding by the United States to appropriate a parcel of land in Cincinnati as a site for a post office and courthouse.

Power To Protect the Mails

The postal powers of Congress embrace all measures necessary to insure the safe and speedy transit and prompt delivery of the mails.¹³⁷⁰ And not only are the mails under the protection of the National Government, they are in contemplation of law its property. This principle was recognized by the Supreme Court in 1845 in holding that wagons carrying United States mail were not subject to a state toll tax imposed for use of the Cumberland Road pursuant to a compact with the United States.¹³⁷¹ Half a century later it was availed of as one of the grounds on which the national executive was conceded the right to enter the national courts and demand an injunction against the authors of any widespread disorder interfering with interstate commerce and the transmission of the mails.¹³⁷²

Prompted by the efforts of Northern anti-slavery elements to disseminate their propaganda in the Southern states through the mails, President Jackson, in his annual message to Congress in 1835, suggested "the propriety of passing such a law as will prohibit, under severe penalties, the circulation in the Southern States, through the mail, of incendiary publications intended to instigate the slaves to insurrection." In the Senate, John C. Calhoun resisted this recommendation, taking the position that it belonged to the States and not to Congress to determine what is and what is not calculated to disturb their security. He expressed the fear that if Congress might determine what papers were incendiary, and as such prohibit their circulation through the mail, it might also determine what were not incendiary and enforce their circulation.¹³⁷³ On this point his reasoning would appear to be vindicated by such decisions as those

¹³⁶⁸ *Searight v. Stokes*, 44 U.S. (3 How.) 151, 166 (1845).

¹³⁶⁹ 91 U.S. 367 (1876).

¹³⁷⁰ *Ex parte Jackson*, 96 U.S. 727, 732 (1878). See *United States Postal Serv. v. Council of Greenburgh Civic Assn's*, 453 U.S. 114 (1981), in which the Court sustained the constitutionality of a law making it unlawful for persons to use, without payment of a fee (postage), a letterbox which has been designated an "authorized depository" of the mail by the Postal Service.

¹³⁷¹ *Searight v. Stokes*, 44 U.S. (3 How.) 151, 169 (1845).

¹³⁷² *In re Debs*, 158 U.S. 564, 599 (1895).

¹³⁷³ Cong. Globe, 24th Cong., 1st Sess., 3, 10, 298 (1835).