

Sec. 8—Powers of Congress

Cl. 7—Post Office

A unanimous Court transformed these reservations into a holding in *Lamont v. Postmaster General*,¹³⁸² in which it struck down a statute authorizing the Post Office to detain mail it determined to be “communist political propaganda” and to forward it to the addressee only if he notified the Post Office he wanted to see it. Noting that Congress was not bound to operate a postal service, the Court observed that while it did, it was bound to observe constitutional guarantees.¹³⁸³ The statute violated the First Amendment because it inhibited the right of persons to receive any information that they wished to receive.¹³⁸⁴

On the other hand, a statute authorizing persons to place their names on a list in order to reject receipt of obscene or sexually suggestive materials is constitutional, because no sender has a right to foist his material on any unwilling receiver.¹³⁸⁵ But, as in other areas, postal censorship systems must contain procedural guarantees sufficient to ensure prompt resolution of disputes about the character of allegedly objectionable material consistently with the First Amendment.¹³⁸⁶

Exclusive Power as an Adjunct to Other Powers

The cases just reviewed involved attempts to close the mails to communication that were deemed to be harmful. A much broader power of exclusion was asserted in the Public Utility Holding Company Act of 1935.¹³⁸⁷ To induce compliance with the regulatory requirements of that act, Congress denied the privilege of using the mails for any purpose to holding companies that failed to obey that law, irrespective of the character of the material to be carried. Viewing the matter realistically, the Supreme Court treated this provi-

¹³⁸² 381 U.S. 301 (1965).

¹³⁸³ 381 U.S. at 305, quoting Justice Holmes in *United States ex rel. Milwaukee Social Democratic Pub. Co. v. Burleson*, 255 U.S. 407, 437 (1921) (dissenting opinion): “The United States may give up the Post Office when it sees fit, but while it carries it on the use of the mails is almost as much a part of free speech as the right to use our tongues. . . .” See also *Blount v. Rizzi*, 400 U.S. 410, 416 (1971) (quoting same language). But for a different perspective on the meaning and application of Holmes’ language, see *United States Postal Service v. Council of Greenburgh Civic Assn’s*, 453 U.S. 114, 127 n.5 (1981), although there too the Court observed that the postal power may not be used in a manner that abridges freedom of speech or press. *Id.* at 126. Notice, too, that first-class mail is protected against opening and inspection, except in accordance with the Fourth Amendment. *Ex parte Jackson*, 96 U.S. 727, 733 (1878); *United States v. van Leeuwen*, 397 U.S. 249 (1970). But see *United States v. Ramsey*, 431 U.S. 606 (1977) (border search).

¹³⁸⁴ *Lamont v. Postmaster General*, 381 U.S. 301, 306–07 (1965). See also *id.* at 308 (concurring opinion). This was the first federal statute ever voided for being in conflict with the First Amendment.

¹³⁸⁵ *Rowan v. Post Office Dep’t*, 397 U.S. 728 (1970).

¹³⁸⁶ *Blount v. Rizzi*, 400 U.S. 410 (1971).

¹³⁸⁷ 49 Stat. 803, 812, 813, 15 U.S.C. §§ 79d, 79e.