

Enumerated v. Implied Powers

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Supporting Question 1:	What are Congress' enumerated powers?
Source 1A:	Excerpts from Article I of the US Constitution. <i>Note:</i> The following text is a transcription of the Constitution as it was inscribed by Jacob Shallus on parchment. The spelling and punctuation reflect the original. Access a digital version here: https://www.archives.gov/founding-docs/constitution-transcript#1
U.S. Constitution. Article I.	

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Article. I.

Section. 1.

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section. 2.

...When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

Section. 3.

...The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Section. 4.

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

Section. 5.

Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.



Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

[...]

Section. 7.

All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law.

Section. 8.

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;



To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

[...]



Supporting Question 1:	What are Congress' enumerated powers?
Source 1B:	Video from iCivics that discussed the powers of Congress. (2:38)
iCivics. (2022). <i>The Dos and Don'ts of Congress</i> . Retrieved from https://youtu.be/CuaxcpGIOLs?si=6iwixztETK3yTA9L .	





The Do's and Don'ts of Congress



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Supporting Question 2:	What are Congress' implied powers?
Source 2A:	Analysis and interpretation of Article I to explain enumerated, implied, resulting, and inherent powers of Congress.
Library of Congress. (2020). <i>ArtI.S1.3.3 Enumerated, Implied, Resulting, and Inherent Powers</i> . Constitution Annotated. https://constitution.congress.gov/browse/essay/artI-S1-3-3/ALDE_00013292/	

Article I, Section 1:

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

The Supreme Court has recognized four general categories of powers belonging to the National Government—enumerated, implied, resulting, and inherent. Enumerated powers are those specifically identified in the Constitution.¹ In *McCulloch v. Maryland*, Chief Justice John Marshall recognized that the Constitution expressly provides the National Government with specific enumerated powers,² stating:

This government is acknowledged by all to be one of enumerated powers. The principle, that it can exercise only the powers granted to it, would seem too apparent, to have required to be enforced by all those arguments which its enlightened friends, while it was depending before the people, found it necessary to urge. That principle is now universally admitted.³

Article I, Section 8, of the Constitution lists various powers that the States ceded to the National Government. These powers include the power to tax and spend, to borrow, and to regulate commerce. Article I, Section 8, however, is not an exclusive list of powers the Constitution expressly grants to the National Government or its constituent branches. For instance, Congress also has power to regulate the electoral process under Article I, Section 4,⁴ and the President has the power to veto legislation under Article I, Section 7.⁵

Implied powers are those powers necessary to effectuate powers enumerated in the Constitution.⁶ In other words, the Constitution's enumeration of powers implies an additional grant of such powers that are necessary to effectuate them. In *McCulloch v. Maryland*, Chief Justice Marshall declared that the power conferred by the Necessary and Proper Clause⁷ embraces all legislative means which are appropriate to carry out the powers provided expressly by the Constitution.⁸ Chief Justice Marshall stated: Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional.⁹ In his *Commentaries on the Constitution of the United States*, Justice Joseph Story discussed implied powers, noting that any analysis of whether a power is constitutional must first begin by determining whether the Constitution expressly provides for the power.¹⁰ If the Constitution does not expressly state (or enumerate) the power, the question then becomes if such a power is necessary to implement a power provided expressly by the Constitution.¹¹

Chief Justice Marshall identified resulting powers as those result[ing] from the whole mass of the powers of the National Government and from the nature of political society.¹² In *American Ins. Co. v. Canter*, Chief Justice Marshall recognized that the constitution confers absolutely on the government of the Union, the powers of making war, and of making treaties; consequently, that government possesses the power of acquiring territory, either by conquest or by



treaty.¹³ From the power to acquire territory, Chief Justice Marshall reasoned, arises the right to govern it.¹⁴ In the *Legal Tender Cases* (*Knox v. Lee*), the Supreme Court clarified that the Constitution neither expressly grants resulting powers to Congress nor are they ancillary to an unenumerated power.¹⁵

A fourth category of power identified by the Supreme Court—*inherent powers*¹⁶—appears to share some of the same characteristics of resulting powers. In *United States v. Curtiss-Wright Export Corp.*, Justice George Sutherland described inherent powers as those that are independent of an authorizing power but are inherent to the government in its role as sovereign.¹⁷ Justice Sutherland emphasized that enumerated and implied powers pertain to those the States ceded to the National Government when the United States was formed,¹⁸ while inherent powers originated in the external sovereignty that Great Britain passed to the United States at the end of the American Revolution. Justice Sutherland wrote:

[S]ince the states severally never possessed international powers, such powers could not have been carved from the mass of state powers but . . . were transmitted to the United States from some other source. . . . When . . . the external sovereignty of Great Britain in respect of the colonies ceased, it immediately passed to the Union. . . . The powers to declare and wage war, to conclude peace, to make treaties, to maintain diplomatic relations with other sovereignties, if they had never been mentioned in the Constitution, would have vested in the Federal Government as necessary concomitants of nationality.¹⁹

Justice Sutherland emphasized the difference between domestic and foreign powers, with the former limited under the enumerated powers doctrine and the latter virtually free of any restraint.²⁰

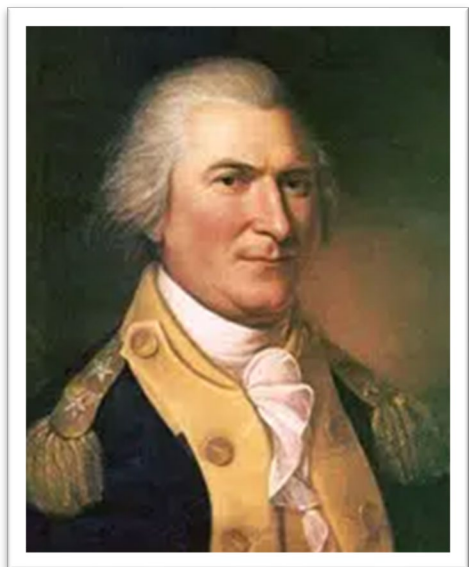
Notwithstanding the doctrine of enumerated powers—the power to legislate by the rights expressly given and duties expressly enjoined by the Constitution²¹—the Court has ascribed implied, resulting, and inherent powers to the National Government. Consequently, the United States, among other things, has power to impart to paper currency the quality of legal tender to pay debts;²² to acquire territory by discovery;²³ to legislate for Indian tribes wherever situated in the United States;²⁴ to exclude and deport aliens²⁵ and to require that those who are admitted be registered and fingerprinted;²⁶ and the powers of sovereignty to conduct foreign relations.²⁷

See https://constitution.congress.gov/browse/essay/artI-S1-3-3/ALDE_00013292/ for associated footnotes.



Supporting Question 2:	What are Congress' implied powers?
Source 2B:	St. Clair's Defeat
St. Clair's Defeat • levin center. Levin Center. (2024a, September 20). https://www.levin-center.org/congress-first-investigation-general-st-clairs-defeat/	

Congress' First Investigation: General St. Clair's Defeat



Portrait of General Arthur St. Clair by Charles Wilson Peale, 1782.
(Source: Independence National History Museum, Philadelphia)

The very first oversight investigation undertaken by the U.S. Congress occurred in 1792, just three years after the U.S. Constitution took effect. The inquiry dug into a significant U.S. military defeat, while also setting an important example in which the executive branch cooperated with a congressional oversight investigation.

At the time, the newly formed United States was expanding westward, and settlers in the Northwest Territory increasingly came into conflict with Native Americans living there. In 1791, Congress authorized a new **regiment** to address the conflicts and provided funding to enlist **militia** for six months. President George Washington appointed Arthur St. Clair to serve as Major General of the new regiment and tasked him with designing and executing an effective battle plan.

From the start, there were difficulties in recruiting soldiers due to low pay. Secretary of War Henry Knox had appointed Samuel Hodgdon as **Quartermaster General** for the military. Mr. Hodgdon signed contracts with a prominent but dishonest businessman, William Duer, whose failure to provide necessary items slowed the expedition at every step — including the

late supply of uniforms, a lack of guns and tools, and scarce rations (among other problems).

The regiment moved slowly through present-day Ohio and did not make it to

Regiment: A military unit.

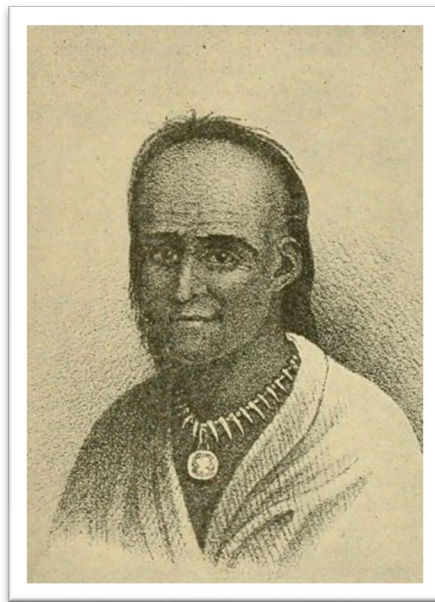
Militia: A temporary military force that is raised from the civil population to support a regular army during an emergency.

Quartermaster General: The head of the department of the army that deals with providing housing and equipment for the troops.

its final destination on the banks of the Wabash River until November 3, 1791 — months later than anticipated.

The next morning, 1,000 Native Americans from the Shawnee, Miami, and Delaware tribes, led by War Chiefs Mihšihkinaahkwa ("Little Turtle") of the Miami Tribe and

Weyapiersenwah ("Blue Jacket") of the Shawnee tribe, descended on the camp. Many of the volunteer militia fled, and though some soldiers tried to fight, Little Turtle's forces overwhelmed General St. Clair's regiment. After 2 hours of brutal attack, General St. Clair commanded the surviving troops to retreat.



Mihšihkinaahkwa "Little Turtle" by Gilbert Stuart circa 1798
(Source: public domain)

What would become known as the Battle of the Wabash was the worst defeat of U.S. forces by Native Americans in U.S. history. Over 650 U.S. soldiers were killed and more than 270 were wounded. Native Americans suffered approximately 100 casualties.

The defeated army returned to Fort Washington on November 8, and a furious President Washington was informed of the defeat the next day. Secretary Knox reported to Congress that the late season and poorly trained soldiers were to blame for the terrible defeat.

Resolution: A piece of legislation introduced in the House or Senate, limited to affect only Congress.

Precedent: A prior ruling or judgment that may influence future proceedings.

In the House of Representatives, a motion to form a committee to investigate the military defeat was made on February 2, 1792. On March 27, 1792, Representative Giles introduced a **resolution** requesting an inquiry by President Washington to uncover the cause of the loss. And so began the debate that would spark the first congressional investigation in the nation's history.

Because the Constitution is silent on the power of Congress to conduct oversight, the members of the Second Congress had to determine what authority, if any, they possessed to investigate another branch of government and how to proceed. The debate included several Founding Fathers then serving in the House of Representatives. Aware that their actions would set a **precedent** for future congressional oversight, many members of Congress weighed in.

At the conclusion of the debate, Representative Giles' resolution to request an inquiry from the President was defeated. A special House committee was then established to investigate the matter, with Representative Fitzsimons as the Chair.

Three days later, on March 30, 1792, the committee made its first request for documents to Secretary Knox. Mr. Knox, in turn, sent the request to the President with a letter asking permission to submit the documents to Congress. President Washington, aware that his actions would set a precedent, met with his department heads (now known as the Cabinet) — Knox, Thomas Jefferson, Alexander Hamilton, and Edmund Jennings Randolph — to determine the appropriate response to the committee's requests.

According to notes by Secretary of State and future President Thomas Jefferson, the Cabinet agreed that the Washington Administration should cooperate with the congressional inquiry. These notes made clear that both branches of government believed Congress had the authority to investigate government actions. The statement that the President should provide records "as the public good would permit" also created the basis for executive privilege that still exists today. Despite this privilege, President Washington decided that he would allow the committee access to all requested documents, but that the originals could not be taken from the departments. President Washington also permitted the department heads to testify before the committee.

The House committee held several days of public hearings. Along with the department heads, several military officers testified, including General St. Clair. After taking testimony and reviewing the evidence, the committee drafted and issued Congress' first oversight report.

The report concluded that Brigadier General Butler had not failed in his responsibilities to recruit an adequate number of troops, but that transportation of those troops had been delayed due to mismanagement by the Quartermaster General and contractor. The report found that General St. Clair had been forced to perform the duties of quartermaster in addition to his own and noted that he had taken on the extra duties with responsibility and care.

The committee report concluded that the principal causes of the military failure were delays in obtaining supplies, mismanagement and neglect by the Quartermaster and contractor Duer, and a lack of experienced and disciplined troops. On February 26, 1793, the report was formally presented to the House, and the investigative committee was dissolved. The committee's work led to several changes. First, Quartermaster General Hodgson was removed from his position, demonstrating that a congressional investigation could cause an executive branch official to be held accountable for mismanagement. Second, battle lessons learned led to administrative reforms producing a more centralized, well-trained, and logistically supported U.S. military.



"Washington and his Cabinet" lithograph by Currier & Ives, held by Library of Congress (Source: public domain)

Equally important, this early precedent, acknowledged by senior members of both the legislative and executive branches, made clear that Congress had the authority to investigate actions taken by the federal government, acquire agency documents, take sworn testimony, and produce a report with detailed factual findings and recommendations. The 1792 investigation of General St. Clair's Defeat led the way for government oversight by every Congress to come.

Learn more about St. Clair's Defeat and the first Congressional investigation:

- [A Narrative of the Manner of the Campaign Against the Indians Under the Command of Major General St. Clair, by Major General St. Clair \(1812\)](#)
- [Congressional Inquiries are Nearly as Old as the Constitution](#)
- [Remembering St. Clair's Defeat](#)
- [St. Clair's Campaign of 1791: A Defeat in the Wilderness That Helped Forge Today's U.S. Army](#)
- [Congress Investigates: A Critical and Documentary History, Volume One, Chapter One by the Robert C. Byrd Center](#)
- [Levin Center Portraits in Oversight: General St. Clair's Defeat](#)

Supporting Question 2:	What are Congress' implied powers?
Source 2C:	<i>Learning by Hearings</i> video about the investigation into General St. Clair's Defeat in 1791. (8:55)
The Levin Center for Oversight and Democracy. (2024). Portraits in Oversight: General St. Clair's Defeat. Retrieved from https://youtu.be/CuaxcpGIOLs?si=6iwixztETK3yTA9L .	



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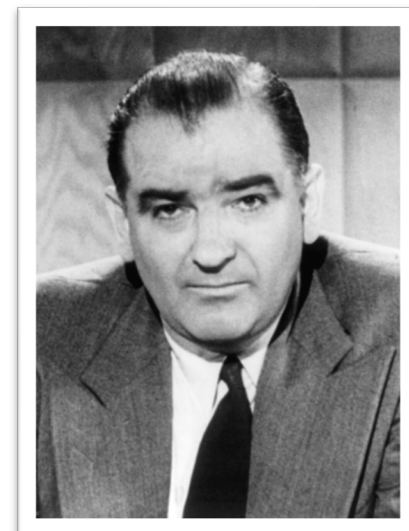
Supporting Question 3:	Can Congress do anything it wants?
Source 3A:	Joe McCarthy's Oversight Abuses
Joe McCarthy's Oversight Abuses • levin center. Levin Center. (2024a, September 20). https://levin-center.org/joe-mccarthys-oversight-abuses/	

Joe McCarthy's Oversight Abuses

Joseph McCarthy was sworn into the U.S. Senate as a Republican from Wisconsin in 1947 and remained a senator until his death in 1957. During his tenure, he sat on the Senate Government Operations Committee, serving as full committee chair from 1953 to 1955. From 1953 to 1954, he also served as **chair** of its Permanent Subcommittee on Investigations (PSI), a panel charged with investigating and exposing waste, fraud, and abuse in a wide range of government programs. Focusing on Cold War fears of communism and **subversion**, Senator McCarthy became infamous for abusing his congressional oversight powers, spreading disinformation, and acting without regard for individuals' dignity and constitutional rights.

McCarthy's Rise to Prominence

Senator McCarthy first rose to prominence in early 1950 when he claimed to have a list of 205 communists who worked in the U.S. State Department. The Senate **Subcommittee** on the Investigation of Loyalty of State Department Employees was formed to investigate his accusations. The committee determined that the nine State Department employees actually named by McCarthy during hearings were not communists and declared the list as "a fraud and a hoax." However, simply by making the allegations, the relatively unknown senator gained national attention.



*Senator Joseph McCarthy, 1954
(Source: Library of Congress)*

Chair: Member who conducts and guides committee meetings.

Subversion: Undermining the power and authority of an institution.

Subcommittee: A subdivision of a larger congressional committee that considers specific issues and reports back to the committee.

He was not the first or only one to assert that spies were operating within the U.S. government. In 1947, President Harry Truman created the Federal Employee Loyalty Program, which directed the FBI to investigate government employees suspected of communist affiliation. Other investigations, such as the hearings examining the so-called "Hollywood Ten" film writers were occurring around this time. In 1951, Julius and Ethel Rosenberg were convicted of **espionage** and executed in 1953, sparking public attention and concern

regarding the government's response to the apparent threat of communism.

McCarthyism and Its Tactics

Senator McCarthy's speech about unnamed communists who had supposedly infiltrated the State Department stoked public fears about communism – often referred to as the **Red Scare** – that had already been awakened by the communist take-over of Eastern Europe following World War II, the 1949 communist revolution in China, and emerging communist movements in countries around the world. Senator McCarthy also targeted employees and

Espionage: The act of spying and gathering secret information, often in the government to obtain political and military information.

Red Scare: The spreading of fear of the possible rise of communism or anarchism.

service-members he claimed to be members of the LGBTQ+ community in the lesser-known “Lavender Scare,” causing numerous government employees to lose their jobs because of their assumed sexual orientation rather than political leanings. In response to Senator McCarthy’s actions, Herbert Block published an unflattering political cartoon coining the term “McCarthyism.”

While some in the Senate opposed Senator McCarthy’s tactics, calls to reject McCarthyism did not deter Senator McCarthy from sowing disinformation and suspicion. In January 1953, when the Republicans assumed majority control of the U.S. Senate, Senator McCarthy became chair of the Permanent Subcommittee on Investigations (PSI). He hired the abrasive, 26-year-old Roy Cohn as his chief counsel and instructed him to search for communists in the U.S. government.

He began holding both non-public and public hearings with a wide variety public hearings with a wide variety of public officials, academics, and private citizens, subjecting many to unfair questions and accusations.

Senator McCarthy’s relationship with his PSI colleagues was rocky. He denied other members of the subcommittee full access to the information being gathered, provided inadequate notice of hearings and meetings, and refused to allow subcommittee Democrats to hire their own staff.

Senator McCarthy plowed ahead with several investigations and hearings into the State Department's foreign-language radio station, Voice of America, the U.S. Information Services Libraries around the world, and university professors. In these hearings, he rejected the value of allowing a range of political opinions in a democracy and ignored principles of academic and intellectual freedom.

Eisenhower’s Executive Order

Senator McCarthy also attacked the military, leading to a chain of events that put him at

Executive Order: A rule or order issued directly by the president that acts as a law.

odds with the Army and President Dwight D. Eisenhower, and that eventually led to his downfall. In August 1953, Senator McCarthy held PSI’s first closed-door session investigating the Army. Earlier that year, in April 1953, President

Eisenhower had issued **Executive Order** 10450 requiring the reinvestigation of government personnel previously suspected of disloyalty.

In response to the Executive Order, the Army intelligence unit reopened investigations into civilian engineers at Fort Monmouth’s laboratories who had previously been cleared of charges. Alleging that a communist spy ring was operating at Fort Monmouth, Senator McCarthy questioned several low-level civilian employees in a closed session and exaggerated to the press the evidence obtained. Forty-two Signal Corps employees were suspended, despite an FBI reinvestigation that found no evidence of a spy ring.

On November 6, 1953, Senator McCarthy met with Army Secretary Robert T. Stevens and demanded information about the Army’s loyalty boards and investigations in defiance of President Truman’s Executive Order requiring such information to be kept secret and President Eisenhower’s extension of that order.



Herbert Block’s cartoon in Washington Post on March 29, 1950 (Source: Library of Congress)

Growing Public Attention and McCarthy's Downfall

On March 9, 1954, news broadcaster Edward R. Murrow dedicated his entire evening program, *See It Now*, to condemning McCarthyism and actions taken by the senator. As one of the most trusted journalists in the country, the broadcast drew increased public attention to Senator McCarthy's tactics. In the days following the broadcast, due to growing factual disputes and claims of bias, the other PSI members voted unanimously to remove Senator McCarthy as PSI chair for the duration of the Army inquiry. Senator McCarthy agreed to temporarily leave the subcommittee. The Army-McCarthy hearings, which would continue for 35 days, began on April 22, 1954, and the broadcasts garnered an enormous audience of around 20 million. Despite losing his position on PSI, Senator McCarthy used a variety of

tactics, some abusing Senate institutional norms, to dominate the hearings. He testified as a witness for parts of six days and attended all the hearings, using his status as a senator to interrupt multiple witnesses by claiming a “**point of order**” — which became a catchphrase throughout the nation. For many Americans, the hearings were their first direct exposure to Senator McCarthy's conduct, and many were shocked to see him attempt to introduce doctored photographs and documents into the record, bully witnesses, and make baseless accusations. By allowing the public to see the hearings in their entirety, as they occurred, PSI members limited the senator's ability to manipulate the facts.



*Attorney Joe Welch and Senator Joe McCarthy at the Army-McCarthy hearings on June 9, 1954
(Source: U.S. Senate)*

The hearings ended on June 17, 1954, and the report cleared the Army of wrongdoing while noting that the Army should have brought complaints to the full subcommittee when officials felt Senator McCarthy and staff requests had become unreasonable.

Point of Order: Inquiring during a debate as to whether the proper rules and procedures are being followed.

Censure: A formal expression of strong disapproval enacted by a majority vote.

Select Committee: Small committee formed for a specific purpose and disbanded afterwards.

Lame Duck Session: A meeting of Congress that occurs after election day, but before the next Congress meets the following January. This term can also apply to Presidents and other elected officials.

Jurisdiction: The limits or territory within which authority may be exercised.

Censure of Senator McCarthy

On July 30, 1954, Republican Senator Ralph Flanders of Vermont introduced a resolution to **censure** Senator McCarthy's increasingly offensive conduct. In response, the Senate formed a bipartisan **Select Committee** to Study Censure Charges against Senator McCarthy. Senator McCarthy attacked the committee, calling it an “unwitting handmaiden of the Communist party.” On December 2, 1954, in a **lame duck session** called to consider the select committee's findings, the Senate voted 67 to 22 to condemn Senator McCarthy for conduct “contrary to senatorial tradition,” with all Democrats voting for the measure and Republicans evenly split. In November 1954, elections cause Republicans to lose control of both chambers of Congress, and Senator McCarthy never regained his position as chair of PSI.

The Aftermath

Senator McCarthy's abuse of his congressional investigative powers forced wholesale changes within the Permanent Subcommittee on Investigations. These changes included requiring authorization of investigations by both the chair and ranking member, allowing minority members to initiate their own preliminary investigations and hire staff, and giving all members full access to all information obtained by the subcommittee.

The Supreme Court warned that in abusing its power to conduct investigations, Congress had encroached on the most cherished of American freedoms including the right to privacy and the freedom of speech, press, religion, and assembly. The Supreme Court also issued several rulings in the 1950s that strengthened the rights of witnesses called before a congressional inquiry. The high court upheld the investigative powers of Congress while holding that: 1) a congressional committee had to state the specific **jurisdiction** and purpose of the committee when attempting to force a witness to share information; and 2) a witness at a congressional proceeding may invoke their right against self-incrimination by merely mentioning the Fifth Amendment.

Jurisdiction: The limits or territory within which authority may be exercised.

Conclusion

In the 15 months that Senator McCarthy chaired PSI, he called over 500 persons to appear before the subcommittee, producing over 9,000 pages of transcripts. By statute, all records pertaining to congressional investigations are sealed for 50 years, so it was not until 2004, that the unpublished McCarthy-era records were unsealed. At that time, PSI Chair Carl Levin and Ranking Member Susan Collins prefaced the release of the records with a joint statement that included the following:

Senator McCarthy's zeal to uncover subversion and espionage led to disturbing excesses. His browbeating tactics destroyed careers of people who were not involved in the infiltration of our government. His freewheeling style caused both the Senate and the Subcommittee to revise the rules governing future investigations and prompted the courts to act to protect the constitutional rights of witnesses at congressional hearings. These hearings are a part of our national past that we can neither afford to forget nor permit to reoccur.

Learn more about Senator McCarthy's oversight abuses:

- [*Congress Investigates: A Critical and Documentary History*, Volume Two, Chapter Six by the Robert C. Byrd Center](#)
- [Investigating Power: Timeline of McCarthyism](#)
- [McCarthy: Power Feeds on Fear \(PBS documentary\)](#)
- [McCarthyism and the Red Scare](#)
- [Sixty-five years ago, a divided Senate was called upon to judge a rogue politician](#)
- [U.S. Senate: McCarthy and the Army-McCarthy Hearings \(includes links to Executive Session Transcripts unsealed in 2004\)](#)
- [Levin Center Portraits in Oversight: Joe McCarthy's Oversight Abuses](#)

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