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MEMORANDUM

September 22, 1995

SUBJECT: Constituent Inquiry: Congressional Power to Legislate

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This is to respond to your request to explain how one can identify a law that has been passed under Congress' authority to legislate regarding the District of Columbia, and a law that is passed under Congress' authority to legislate regarding the other fifty states.

Article I of the Constitution addresses the structure and powers of the United States Congress. For example, Article I, §8 contains 18 clauses, each of which addresses one or several areas in which Congress has the authority to Legislate. Other Congressional powers are found in other Articles of the Constitution,¹ or in the various amendments to the Constitution.² Among these many powers, Congress has been granted the authority to exercise exclusive jurisdiction over the District of Columbia.⁸ It should be noted, however, that there is no similar clause in the Constitution that gives Congress authority to exercise exclusive jurisdiction over the states.

When Congress passes a law, there is no requirement under the Constitution that the Congress identify the nature or source of its authority. Often, a particular piece of legislation may have multiple constitutional authorities, each of which would be sufficient to pass the legislation: Or, in many cases, the legislative authority is derived from overlapping authorities which support some, but not all pieces of the legislation. Thus, for instance, a bill concerning universal health care might be based on the authority of

¹ *See, e.g.*, U.S. Cons., Art. IV, §8, cl 2 (provides congressional power over federal land and territories).

² *See, e.g.*, U.S. Const., Amendment XIV, §5 (giving Congress the power to enforce the Fourteenth Amendment).

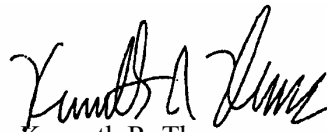
³ U.S. Const., Art. I, §8, cl. 17.

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Congress to regulate commerce,⁴ to raise taxes,⁵ to grant patents, to create all necessary laws,⁷ and other powers.

Congress passes many laws that affect the District of Columbia, including both laws national in scope, *e.g.* imposing taxes, regulating air quality, or building highways, and laws local in nature, *e.g.* a law limiting how the District Government may spend its federal payment. Arguably, all these laws are based on Congress's authority over the District of Columbia, at least to the extent that they effect the District of Columbia. However, these laws may or may not have an independent basis elsewhere in the Constitution.

[Consequently, legal analysis evaluating the constitutional basis would need to be done on a case by case basis. Occasionally, arguments are made in federal courts that Congress has acted outside of the scope of its constitutional authority in passing a piece of legislation. In these cases, the constitutional basis for a particular piece of legislation may address the issue of which Congressional powers are the basis for the legislation. Or, in other cases, a court might note the constitutional authority for a statute in *dicta*. Generally, however, the constitutional basis for legislation is accepted by both parties to a case, so the issue is generally irrelevant to particular litigation.



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⁴ U.S. Const. Art. I, §8, cl.3

⁵ U.S. Const. Art. I, §8, cl.1

⁶ U.S. Const. Art. I, §8, cl.8

⁷ U.S. Const. Art. I, §8, cl.18

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