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Speaking of the Constitution...let's have some consistency

By TimChapman

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I have been pretty up front in defending Congress's right to jealously guard its turf against Executive branch encroachments ([for my reasoning -- which focuses on protocol and future precedent more so than the constitution -- see my latest post and follow links backwards](#)).

So now that following Congressional rules and honoring the intent of the Constitution are all the rage, it seems appropriate to extend the discussion into another area -- an area in which I am nothing but critical of Congress.

[House Rule XIII, Section 3\(d\)\(1\)](#), requires that all committee reports contain "a statement citing the specific powers granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution."

But while Congressional leadership is intent upon guarding institutional prerogatives and the the Constitution in regards to the Jefferson FBI raid, they seem much less intent on following this simple House rule.

Indeed, all too often committee reports either have no constitutional authority statement, an incomplete constitutional authority statement (i.e. one that does not cite the specific constitutional power, as House rules require), or an inaccurate constitutional authority statement (e.g. citing the "necessary and proper" clause--Article I, Section 8, Clause 18--without citing the appropriate "foregoing power" that such a citation requires). Or some just cite the commerce clause dubiously.

Here is a perfect example: House Report #109-421 (Resources Committee) accompanying the NEOTROPICAL MIGRATORY BIRD CONSERVATION IMPROVEMENT ACT OF 2006 says "Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill."

Along similar lines, House Report #109-341, Part 1 (Resources Committee) accompanying the SALT CEDAR AND RUSSIAN OLIVE CONTROL DEMONSTRATION ACT, also cites the same section of the constitution.

Well, take a look at [Article 1 Section 8](#) and try to decipher which specific section of authorizes this. That is a pretty broad explanation.

Or how about this one, House Report #109-181 accompanying the 527 REFORM ACT OF 2005,

says "Article 1, Section 4 of the U.S. Constitution grants Congress the authority to make laws governing the time, place and manner of holding Federal elections."

[Article 1 Section 4](#) does indeed grant Congress "the authority to make laws governing the time, place and manner of holding Federal elections." But no where in that section of the Constitution do I see Congress given the power to regulate the free speech of its political opponents.

Finally, the [House Committee on Appropriations](#) proudly displays [Article 1, Section 9, Clause 1](#) on its homepage, "No money shall be drawn from the treasury, but in consequence of appropriations made by law."

Well, fine. But why does the Appropriations Committee NEVER cite constitutional authority for specific items that they appropriate for. Are appropriations for swimming pools, Halls of Fame or [Alaskan flying fish](#) constitutional?

So what's a conservative to do? Here is a start: support legislation like Rep. **John Shadegg's**. Last year Shadegg introduced HR 2458, the Enumerated Powers Act. This bill would require "each Act of Congress to contain a concise and definite statement of the constitutional authority relied upon for the enactment of each portion of that Act. Declares that failure to comply with this requirement shall give rise to a point of order in either House of Congress."

That sounds reasonable.

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