

AMERICAN CONSTITUTIONALISM  
VOLUME I: STRUCTURES OF GOVERNMENT  
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Supplementary Material

Chapter 10: The Reagan Era – Powers of the National Government

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**House Report on the Expulsion of Representative Lederer (1981)<sup>1</sup>**

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In 1978, the Federal Bureau of Investigation (FBI) launched a sting operation known as Abscam aimed at a number of federal, state, and local government officials. An FBI agent posed as a rich Middle Eastern businessman and videotaped offers of money in exchange for a range of political favors. In 1980, the operation became public, and indictments on bribery charges were handed down against five members of the U.S. House of Representatives and a member of the U.S. Senate, among others. Among the indicted were Pennsylvania Democrats Michael Myers and Raymond Lederer. In October of 1980, Myers was successfully expelled from the House of Representatives. He lost the 1980 election to regain his seat and was sentenced to a term in prison in 1981. Despite the indictment, Lederer was reelected to his House seat in 1980. He was convicted in January 1981 and filed an appeal, and he did not resign his seat until after a House committee voted to recommend his expulsion in April 1981. His resignation ended the expulsion proceedings, and he too served a prison term.

Each chamber of Congress is empowered by the Constitution to expel a member for “disorderly behavior” with a two-thirds vote. The House has established internal rules governing expulsion proceedings. Rule 14 provided an expedited process when a member has been convicted of a crime, allowing the House to simply review the record rather than engage in a full investigation and hearing of its own. When considering the cases of Myers and Lederer, the House determined that a jury conviction was sufficient to trigger Rule 14, despite ongoing legal appeals. Supporters of the disgraced congressmen argued that the House was violating its own rules in moving to expel these members under Rule 14, were not providing adequate due process to those members before taking a vote to expel them, and were not adhering to the constitutional requirement that members only be expelled for disorderly behavior. Proponents of the expulsion contended that the power of the chamber was essentially plenary and was not significantly constrained by procedural requirements, substantive standards, or judicial review.

Is disorderly behavior a meaningful standard that limits when expulsion might be justified? Are there any procedural requirements for an expulsion vote? Is the House constitutionally obliged to hold a trial or provide similar procedural benefits to an accused member? Could the House reasonably expel a member for past behavior? Did the House need to wait for the legal appeals in the criminal cases to be completed before voting to expel Myers and Lederer? Could the House expel Lederer if he had been found not guilty in the criminal case? Should it matter that Lederer was reelected after his indictment? What if he had been reelected after his conviction? Could the House vote to expel Lederer if he had successfully won an election to his House seat after completing his prison sentence?

E. BARRETT PRETTYMAN, JR., Special Counsel to the House Committee

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The Constitution explicitly provides in Article I, Section 5, Clause 2, that each House of Congress has the power to expel one of its own Members:

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

This language is clear on its face in providing each House with the power of expulsion.

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<sup>1</sup>Excerpt taken from *In the Matter of Representative Raymond F. Lederer*, Committee on Standards of Official Conduct, U.S. House of Representatives, H. Rep. 97-110, 97th Cong., 1st Sess. (1981).

The House has exercised the power of expulsion on four occasions. The Senate has expelled many more Members. . . . In none of these instances has there been a judicial challenge to Congress' power to expel a Member, and thus there simply are no judicial precedents on the point.

. . . .  
[S]everal arguable limitations on the expulsion power have been considered and reviewed by legal scholars. . . . There is little precedent supporting these possible limitations on Congress' expulsion power. . . . Based upon the record reviewed and the conclusions already reached by the Committee, it appears clear that the conduct which the Committee has found Congressman Lederer to have committed would constitute "disorderly behavior" under virtually any definition of that admittedly ambiguous phrase. His actions have been found to constitute criminal offenses. Representative Lederer's actions were taken in connection with his office, rather than in a purely private, non-Congressional capacity. Finally, there is no issue here with regard to the Committee's proceeding against Congressman Lederer based upon his expression of political views. . . .

It has also been argued that Congress may not discipline a Member for conduct which occurred prior to his election. There has been extensive House consideration of this issue over the years. . . . While a review of these precedents demonstrates that the House has been inconsistent in its approach to this general issue, . . . these precedents simply do not apply to the particular facts of the Lederer matter.

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. . . . To the extent that a recent trend [of not expelling members for actions prior to their election to the House] may be emerging, it would appear . . . that the issue is one of Congressional policy, and not Constitutional power. . . .

. . . . [T]he House precedents against punishment for prior misconduct have sometimes been characterized as constituting a doctrine of "forgiveness," resting on the assumption that the electorate, knowing full well of the Member's misconduct, has consciously chosen to forgive those acts and return him to the House.

. . . .  
Accordingly, the decision concerning what, if any, sanctions to apply to Congressman Lederer for his conduct during the prior Congress – which conduct resulted in his conviction after the last election – would appear to rest solely within the power and discretion of the House, free from any Constitutional restraints.

REPRESENTATIVE DON BAILEY (Democrat, Pennsylvania)

. . . .  
The [House Committee on Standards of Official Conduct] chose to proceed under the truncated procedures provided for in Rule 14 of the Committee's Rules. That procedure is dependent upon, or is triggered by, a "conviction" in a Federal, State or local Court of a criminal offense.

In the Lederer matter, this procedure was chosen even after a poor precept was laid down "In the Matter of Representative Michael O. Myers." That precedent was established at a committee hearing in which the definition of the word conviction in and for the purposes of Rule 14 was deemed to mean "a jury verdict." . . .

Such a course of action was fundamentally unfair. Not only was it improper in a Constitutional sense, but it defies everything for which this country and our basic history of civil liberties represents.

In short, the decision was very much an ex post facto type of approach. Once it had been ascertained that there was some type of political necessity for punishing Michael Myers, then and only then was it decided that definitions in the Rule would have to be either changed or altered in order to fit the desired end.

The alleged authority for this decision was found in an interpretation by the Special Counsel to the Committee, that it could really do practically anything it wanted, without deference to the Court or to the Constitution, because supposedly the authority of the House to discipline was unchallenged and separate from Constitutional restraints or the powers of any other Branch.

This may be the case but only because our institutions or decisionmakers determine it thus. No decent or plausible, intellectual, ethical, moral or even suitably legalistic argument can be made in support of proceeding in this manner.

... The House of Representatives in its disciplinary functions, cannot and never should be free from at least a basic adherence to the requirements of the Bill of Rights or of the 14th Amendment, all of which are part of the Constitution of the United States of America.

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We do not need to abide by those definitions of due process as expanded and developed by the Judicial Branch because, provided some semblance of the requirements upon which that law has developed have been met, we are still within the proper authority and spirit of the Constitution of the United States of America, when performing our duties under the authority given us in Article I, Section V. But we must at least meet a basic common sense definition of these requirements.

Although the Courts may never have the courage to interfere in our process, although the Courts may not even have the courage to comment on our process, we have indeed invited them to step in and embarrass the House for this improper and unfair procedure. . . .

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