

# Legal Dictionary

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## ENUMERATED POWERS

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November 7, 2015 | by: [Content Team](#) |



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Enumerated powers are specific powers granted to Congress by the United States **Constitution**. The framers of the Constitution wanted to ensure the new **federal government** would not become an

overreaching entity that might subject the people to the oppression from which they had fled. To that end, they listed, in Article 1, Section 8 of the Constitution, the authority over certain specific things. Authority over every issue not enumerated, or assigned to Congress, is reserved for the individual states. To explore this concept, consider the following enumerated powers definition.

## Definition of Enumerated Powers

### Noun

1. Specific powers granted to Congress as outlined in Article 1, Section 8 of the United States Constitution.

### Origin

U.S. Constitution, Article 1, Section 8

## What are Enumerated Powers

The U.S. Constitution provides a list of things that Congress, or the federal government, cannot do. These are mostly found in the [Bill of Rights](#), while are

Amendments to the Constitution. For example, the federal government cannot deny people their right to free speech, and cannot dictate how or who people worship. It was necessary, however, that the federal government have authority over certain issues, such as printing money, and regulating commerce with other nations.

In order to ensure that the federal government could not give itself more powers over the people, the framers specifically listed what Congress would be allowed to do. These are known as “enumerated powers,” or “**delegated powers**.” Article 1 of the Constitution also addresses **concurrent powers**, which are those shared between the federal and state governments.

## **Specific Enumerated Powers Examples**

In [Article 1, Section 8](#) of the United States Constitution, 17 Congressional powers are listed. Specifically, Congress has to power to:

- Lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United

States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

- Borrow Money on the credit of the United States;
- Regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;
- Establish an uniform Rule of **Naturalization**, and uniform Laws on the subject of Bankruptcies throughout the United States;
- Coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;
- Provide for the Punishment of **counterfeiting** the Securities and current Coin of the United States;
- Establish Post Offices and post Roads;
- 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;
- Constitute Tribunals inferior to the supreme Court;
- Define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;
- Declare War, grant Letters of Marque

and Reprisal, and make Rules concerning Captures on Land and Water;

- Raise and support Armies, but no **Appropriation** of Money to that Use shall be for a longer Term than two Years;
- Provide and maintain a Navy; to Make Rules for the Government and Regulation of the land and naval Forces;
- Provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;
- 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;
- 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

- 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.

## Necessary and Proper Clause

The final of the enumerated powers in the Constitution reads:

[Congress shall have the power] “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.”

The “**Necessary and Proper Clause**,” also referred to as the “**Elastic Clause**,” was added to ensure the government had the authority to deal with any serious issues in exercising the other enumerated powers as they arose. The framers of the Constitution knew it would be impossible

to list every single power that the government would need as the world changed.

Because of this, the Necessary and Proper **Clause** was added at the end of the enumerated powers list. The clause earned the nickname “Elastic Clause,” as it provided the government with a means to stretch beyond its authority if needed.

## **Difference Between Enumerated Powers, Implied Powers, and Reserved Powers**

The specific powers granted to Congress in Article 1, Section 8 of the Constitution are known as enumerated powers. There are certain powers ceded to Congress in recognition of their necessity when performing the duties under its enumerated powers. These are referred to as “**implied powers**,” as their authority is implied by the actual enumerated powers granted Congress. While these powers are not specifically mentioned in the Constitution, they are assumed to exist if necessary in order to implement the enumerated powers.

The Tenth **Amendment** specifically provides that all powers that have not been specifically enumerated, or *delegated* to the U.S. Congress, are to be left to the individual states. These are known as “**reserved powers.**” This helps ensure the people have a say in their governmental process at the state level. The Tenth Amendment specifically states:

“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

There are certain powers that, by necessity, are held by both the federal and state governments. Known as “concurrent powers,” these include the power to impose taxes, the power to run elections, the power to borrow money on behalf of the government, and the power to establish and maintain a working court system. Concurrent powers are those that are exercised individually by both federal and state governments, as each level of government has such a need.

In case there is a dispute in which both federal and state governments, court systems, or laws apply according to concurrent powers, the powers of the federal government prevail.



# Denied Powers

While the Constitution specifies powers granted to Congress, as well as powers reserved for the states, Article 1, Sections 9 and 10 also state clearly certain powers that neither level of government may have. For instance, the federal government does not have the power to tax exports, or to confer titles of nobility.

## **Powers denied to the federal government include:**

- Any action that violates the Bill of Rights
- The imposition of taxes on exports from the states
- The authority to use money from the Treasury without approval and passage of an appropriations bill
- The authority to change state boundaries

## **Powers denied to the state governments include:**

- Authority to enter into treaties with other countries
- Authority to print money
- Authority to tax imports or exports
- Authority to retroactively impair contract rights or obligations
- Authority to deny an individual's rights without **due process**

**Powers denied to both federal and state governments include:**

- Authority to grant titles of nobility
- Authority to permit slavery
- Authority to deny citizens the right to vote according to their race, color, or previous servitude
- Authority to deny citizens the right to vote according to their gender

## **Prosecutor's Attempt to Use Enumerated Powers to Prosecute a Gun Crime**

In 1992, Alfonso Lopez, Jr., a 12th grade student at Edison High School in Texas, carried a concealed gun with five cartridges to school. The gun was not loaded, and he claimed he was bringing the weapon to another student in exchange for payment. School authorities confronted Lopez, and he admitted to possessing the weapon. Authorities charged him in violation of the Gun-Free School Zones Act of 1990.

In *United States v. Alfonso D. Lopez, Jr.*, 514 U.S. 549 (1995), Lopez' attorney asked that the charges be dismissed,

claiming the Act was unconstitutional, as Congress did not Have the power to make laws concerning public schools. The trial court denied the motion to dismiss, stating that Congress did have constitutional power to regulate activities concerning schools, as such activity affected interstate commerce, which is under the authority of Congress. Lopez was convicted and he appealed.

The Fifth Circuit Court of Appeals heard the case and ruled in Lopez' favor, reversing the conviction based on its belief the Act was beyond the powers of Congress. The United States government then appealed the matter to the U.S. Supreme Court, arguing that the firearm's presence at school posed a risk to students, which in turn would cause a domino effect in certain expenses that would effect the economy.

The government argued that a gun at school was likely to lead to a violent crime, which would create a variety of expenses, including higher insurance costs that would blanket the economy. In addition, it argued, the gun's presence would cause fear that made it difficult for other students to learn, which would lead to a weaker national economy.

In 5 to 4 decision, the Supreme Court affirmed the appellate court ruling, stating

that, while the federal government has authority under the Interstate Commerce Clause, that power was limited, that that applying the commerce clause to this situation would be stretching its intended purpose. Such use would, in addition, linking the social costs associated with the commission of violent crimes could create a slippery slope by which the federal government might later regulate any activities that could lead to violent crime, whether or not the crime had anything to do with interstate commerce at all.

## **The Supreme Court's Definition of Congress' Power over Interstate Commerce:**

In delivering the Court's written decision on the *Lopez* matter, Chief Justice Rehnquist identified the activities over which Congress has power to regulate interstate commerce. Congress has authority over:

1. The channels or pathways over which interstate commerce is conducted
2. The instrumentalities of interstate commerce, as well as the things and persons of interstate commerce
3. Activities which substantially relate to, or substantially affect interstate commerce

In this case, the Court concluded that the carrying of handguns, whether legally or not, was in no way related to interstate commerce, or even to any type of commercial or economic enterprise. In this, the Court agreed with the appellate court, and overturned Lopez' conviction.

This case, *United States v. Alfonso D. Lopez, Jr.*, broached the serious topic of how far the government might attempt to stretch its bounds in relation to the enumerated powers granted under the U.S. Constitution. It also looks at how far the high Court might go to prevent federal intrusion on powers that should be held by the state.

## Related Legal Terms and Issues

- **Appropriations Bill** - A congressional act that proposes an expenditure or use of public funds for a specific purpose.
- **Authority** - The right or power to make decisions, to give orders, or to control something or someone.
- **Due Process** - The fundamental, constitutional right to fair legal proceedings in which all parties will be given notice of the proceedings, and have an opportunity to be heard.

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