Volume II: Issue 3

The BEACON *Lite*

A Condensed Curriculum of Constitutional Study

Clauses Discussed:

- Article I, Section 6, Clauses 1 & 2

Concepts Discussed:

- Congressional pay and privileges
- Officers prevented from being Members

Article I, Section 6, Clause 1 of the Constitution details, in part, that:

> "The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States."

Mandating member's pay out of the Treasury of the United States (under the Articles, each State was responsible for its members) ultimately created an awkward situation. The effect of this procedure means that Senators and Representatives must decide how much they are to pay themselves.

Being that pay over the years has increased from $6 per day initially to the current level in 2003 of $154,700 per year (plus travel and other benefits), they have obviously increased their rate of pay many-fold.

Continuing long enough, government often ends up opposite from its express purpose (especially when strict attention has not been paid). No longer is it necessary for Congress to specifically vote to increase their pay. On November 30, 1989, Congress enacted the *Ethics Reform Act of 1989* (Public Law 101-194) that *automatically* raises their pay in future years.

Because of this law, congressional pay will increase automatically according to a given formula unless it is temporarily *blocked* on any given year. That their salary has increased 58% under this reverse-acting, automated law within the dozen or so years that it has been enacted should not be of great surprise to anyone.

Article I, Section 6, Clause 1 continues:

> "The Senators and Representatives…shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place."

This second portion of the first clause of Section 6 privileges Senators and Representatives from arrest when they are in session (or travel to or from) except in cases of "Treason, Felony and Breach of the Peace".

Normal civil processes (summons, suits, etc.) are not served or instituted upon members during this time. This privilege, which was passed unanimously and without debate at the convention, was considered necessary to minimize legislative interruptions.

This privilege was not given for the protection of the individual members themselves, to place them above the law, but to keep the body which holds the delegated authority of Citizens sufficiently empowered to competently govern.

To punish Citizens by effectively removing their elected representatives from their legislative seats (i.e., for a trial) was considered unwarranted except in the most serious of cases when it would have been patently unjust to keep them seated.

This privilege can be seen as an extension of the power of Article I, Section 5, Clause 2; the power of each House to punish (and expel) its Members for disorderly behavior. Section 5 does not by itself directly prohibit other branches of government from also punishing members, but when Sections 5 and 6 are coupled together, the effect is that only each House may punish its members (during legislative sessions, except for serious offenses).

With such express privileges, Senators and Representatives have the freedom to speak their minds in either House for the good of the republic (actually, even to its detriment) without fear of judicial or executive recrimination (though they may be punished in each House legislatively, if impropriety occurs).

Article I, Section 6, Clause 2 states:

> "No Senator or Representative shall, during the Time for which he was elected, be appointed to any

civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time: and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office."

Clause 2 prevents Senators and Representatives from accepting federal civil positions that were created during their term, or for which the pay was then increased. They are free to accept any other federal positions during this time: however, due to the prohibition of officers being members in the second portion of Clause 2, they must first vacate their legislative seats.

Historically, there were two primary reasons that members would decide to join the executive branch: *increased job security* (as acknowledged in the old adage — "elected members come and go, bureaucrats remain") and *better pay*. Travel between their home State and the government seat remains a difficulty.

In 1816, Senators and Representatives enacted a law (III Stat. 257) changing their pay based upon their *daily* attendance (setting about 160 days/year average) to that of an *annually-based* compensation (of $1,500), with reductions in pay for missed days without cause.

There was a political uproar over paying members an *annual salary* rather than their *per diem* rate. The annual rate too much approximated a *salaried office* which was thought inappropriate for the legislative branch.

Due to such controversy, on January 22, 1818 (III Stat. 404) Congress set their pay back to a *per diem* rate (but at $8 per day plus $8 per 20 miles traveled) until 1856 (XI Stat. 48), when the members set their pay at $6,000 per two-year Congress ($3,000 per annual legislative session).

To understand relative compensation in that era, it is helpful to look at other acts establishing government pay.

Congress, in 1789, (Chapter XVIII, I Stat. 72) set the pay for the Chief Justice at $4,000, and the associate Justices at $3,500 each. In the following chapter, the pay for the Vice President of the United States was set at $5,000; the President of the United States at $25,000 (to also cover expenses).

Historically, civil pay was better than legislative pay. Legislators only sit part of the year and their pay took this into account. State Legislators and U.S. Congressmen alike were seldom thought of as professional government personnel; they were often Citizen-farmers, country lawyers, and town merchants. Representatives elected every second year were especially close to the general public.

Legislative seats have been the stepping-stones to lofty bureaucratic offices by numerous former members.

Congressmen, under the 1789 law discussed earlier, were allowed $6 of travel allowance for every 20 miles traveled. This rate was capped so as not to exceed the daily rate of $6 for the balance of the time between the ending of one legislative session and the beginning of another.

Thus, even if a Senator from South Carolina was 750 miles from the legislative seat, he would only get travel allowance to the extent that he would not exceed the aggregate sum of $6 per day left between sessions.

Even capped, this rate is even quite high by *today's* standards, acknowledging the difficulty of travel then. Life in that era was difficult in all its aspects. Everything was done slowly and mainly by hand. Roads were primitive; sickness prevalent; work tedious.

Paying someone today $6 for every 20 miles traveled or paying them $6 to work a full day brings things into better perspective with regards to what would be now seen as a large discrepancy between the two (one above current market rate, the other but at a small fraction).

Using dollar-adjusted values, six dollars then would be more like $112 now. $112 for a day's worth of work would cover many people's wages, but $112 for one person to simply travel 20 miles would seem a like a fortune today (wouldn't long-haul truckers who haul 40,000 pounds of goods [and up] today like to get over $5 per mile!

One can understand from this example the profound improvements and achievement two hundred years has brought to America and the rest of the civilized world.

For further discussions on Clause 2 regarding Legislative Members and Executive Officers, see B.O.L. I:2 and B.O.L. 1:10.

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Leavenworth, WA 98826

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