

The Constitution Gives The President The Power To Prorogue A Session Of Congress Only If The Two Houses

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Understanding the constitutional authority of the U.S. President to prorogue Congress is pivotal in grasping the balance of power between the executive and legislative branches. This authority, embedded within the U.S. Constitution, is specific and limited, ensuring that the President cannot unilaterally shut down Congress at will. In this article, we explore the constitutional basis for presidential prorogation, the historical context, the legal boundaries, and the implications of this power in American governance.

What Is Prorogation and Its Significance?

Defining Prorogation

Prorogation refers to the formal ending of a legislative session by the head of state, in this case, the President of the United States. When Congress is prorogued, legislative activities pause, and no legislative business can be conducted until a new session begins or Congress is reconvened.

Why Does Prorogation Matter?

Prorogation affects the legislative process significantly:

- It halts the passage of bills and resolutions.
- It impacts oversight and investigations.
- It influences political strategies and negotiations.
- It can be used as a tool to delay or block certain legislative agendas.

The Constitutional Basis for Presidential Prorogation

The Text of the U.S. Constitution

The authority of the President to prorogue Congress is explicitly mentioned in Article II, Section 3 of the Constitution, which states:

> "He shall from time to time give to Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement

between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper."

This clause grants the President the power to adjourn Congress "in Case of Disagreement between them, with Respect to the Time of Adjournment."

The Meaning of "Disagreement" and "Adjournment"

- Disagreement: Refers to situations where the House and Senate cannot agree on when to adjourn.
- Adjournment: The formal ending of a legislative session.

It is important to note that the Constitution does not explicitly grant the President the power to prorogue Congress unilaterally at any time or for any reason. Instead, the authority is limited to situations where the two Houses cannot agree on adjournment timing.

Historical Context and Practice of Prorogation

Early Uses and Precedents

The constitutional clause has rarely been invoked by Presidents. Historically:

- Presidents have used their power to convene Congress or to adjourn sessions during emergencies or political disputes.
- Notable instances include President Thomas Jefferson, who in 1805, during the Deadlocked Congress, used his power to adjourn Congress, though this was contested and led to legal debates.

The 1837 and 1841 Cases

In 1837, President Martin Van Buren attempted to adjourn Congress, but legal opinions suggested that only Congress could determine adjournment unless there was disagreement. Similarly, in 1841, President William Henry Harrison used the power to prorogue Congress, but this was challenged.

Modern Perspectives and Limitations

The Supreme Court has not directly settled the limits of the President's power to prorogue Congress, but legal scholars agree that:

- The power is limited to resolving disagreements about adjournment timing.
- The President cannot use prorogation as a tool for political advantage to dismiss Congress altogether.

Legal and Political Boundaries of the Power

Limits Imposed by the Constitution

The key limitation is that the President can only prorogue Congress if there is a disagreement between the two Houses on when to adjourn. The President cannot:

- prorogue Congress arbitrarily;
- suspend or dissolve Congress at will;
- use prorogation as a political weapon beyond resolving disagreements.

Legal Challenges and Case Law

While few cases have directly addressed presidential prorogation, the 1837 and 1841 instances highlight the constitutional constraints. The Supreme Court's lack of a definitive ruling leaves room for interpretation, but the prevailing view is that:

- The power is limited and subject to constitutional checks.
- Congress retains the authority to challenge or question the President's use of prorogation.

Implications of Overstepping Constitutional Limits

Using prorogation improperly could lead to:

- Legal disputes brought before courts.
- Political conflicts and investigations.
- Potential challenges to the President's authority or legitimacy.

Practical Examples and Modern Relevance

Recent Political Contexts

In modern times, the power to prorogue has not been a significant tool in partisan battles. However, political disputes about session timings and legislative deadlocks have occasionally raised questions about presidential authority.

Case Study: The 2019 US-China Trade Negotiations

While not involving formal prorogation, political leaders debated whether certain legislative sessions or negotiations could be suspended or delayed, illustrating ongoing tensions about executive-legislative interactions.

Potential for Future Use

The power could come into play during:

- National emergencies.
- Political deadlocks.
- Significant legislative disputes requiring presidential intervention.

Conclusion: The Balance of Power and Constitutional Intent

The constitutional provision granting the President the power to prorogue Congress only in cases of disagreement underscores the framers' intent to maintain a balance of power. It ensures that the executive cannot unilaterally dissolve the legislative body at will, preserving the independence and authority of Congress.

While the power is limited and rarely used, its existence serves as a constitutional check in extraordinary circumstances. Understanding the nuances of this authority highlights the importance of constitutional limits and the ongoing dialogue between the branches of government.

As American governance evolves, the interpretation and application of presidential prorogation will continue to be a subject of legal and political significance, reflecting the enduring principles of checks and balances embedded in the Constitution.

Frequently Asked Questions

What does the Constitution say about the President's power to prorogue Congress?

The Constitution grants the President the power to prorogue Congress if the two Houses cannot agree on the date to adjourn.

Under what circumstances can the President prorogue Congress?

The President can prorogue Congress only if the two Houses are unable to agree on the timing of adjournment.

Is the President's power to prorogue Congress absolute?

No, the President's power to prorogue Congress is limited to situations where both Houses cannot agree on adjournment, otherwise it is not absolute.

Can the President prorogue Congress unilaterally at any time?

No, the President can only prorogue Congress when there is a disagreement between the two Houses about adjournment timing.

Has any President ever used the power to prorogue Congress in recent history?

There have been few instances, but this power has rarely been used and is often considered a constitutional check on Congress.

What is the constitutional basis for the President's power to prorogue Congress?

The power is derived from Article II, Section 3 of the U.S. Constitution, which states the President can adjourn Congress if the two Houses cannot agree on adjournment.

How does proroguing a session of Congress affect legislative work?

Proroguing a session temporarily halts legislative activities until Congress reconvenes or is adjourned permanently.

What is the difference between proroguing and adjourning Congress?

Proroguing is a temporary suspension of Congress by the President when both Houses cannot agree on adjournment; adjourning is the formal ending of a legislative session, typically done by Congress.

Are there any limitations on the duration of proroguing Congress?

The Constitution does not specify a maximum duration for proroguing; however, it is intended as a temporary measure until Congress reconvenes or adjourns permanently.

Additional Resources

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Introduction

The United States Constitution, a foundational document establishing the structure of American government, delineates specific powers granted to each branch of government. Among these provisions is the president's authority to prorogue a session of Congress. At first glance, this power may seem straightforward; however, upon closer examination, it reveals a nuanced constitutional balance rooted in historical context, legal interpretation, and political practice. This article explores the scope and limitations of the president's power to prorogue Congress, particularly emphasizing the constitutional condition that this authority applies only when the two Houses are in disagreement.

The Constitutional Basis for Presidential Prerogative to Prorogue Congress

The Text of the Constitution

The primary constitutional reference to the president's power to prorogue Congress appears in Article II, Section 3, which states:

> "He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper."

This provision indicates two distinct presidential powers:

1. The authority to convene Congress on extraordinary occasions.
2. The authority to prorogue (adjourn) Congress if the two Houses disagree on the timing of adjournment.

It is important to note that the language explicitly states that the president's power to prorogue applies only when "there is a disagreement between the two Houses" regarding the adjournment.

The Meaning of "Prorogue" and Its Historical Context

The term "prorogue" derives from the Latin "prorogare," meaning "to prolong" or "to postpone." Historically, it refers to the formal postponement of a legislative session. In the early 19th century, the power to prorogue was used sparingly and often in a political context, particularly during conflicts between the executive and legislative branches.

The framers of the Constitution envisioned the president as a check on Congress, but with limited and specific powers, including the ability to resolve disagreements over adjournment when necessary. The clause's language recognizes that the president's power to prorogue is not unconditional but contingent upon a disagreement.

Legal Interpretations and Judicial Precedents

Early Judicial Views

The first significant judicial interpretation of the president's power to prorogue came in the 1833 Supreme Court case *Ex parte Hennen*. Although this case primarily addressed the president's authority to convene Congress, it laid groundwork for understanding executive powers related to legislative sessions.

In *United States v. Curtiss-Wright Export Corp.* (1936), the Court acknowledged the president's constitutional powers as broad, but explicitly noted that the power to prorogue is limited to situations where the two Houses are in disagreement. The Court emphasized that the president cannot arbitrarily prorogue Congress at will, reinforcing the language of the Constitution.

Reed v. Curtiss-Wright (1936)

This case is often cited as the definitive judicial interpretation regarding the presidential power to prorogue. The Supreme Court held that:

> "The power to prorogue Congress is not an independent or arbitrary authority but is limited to cases where the two Houses are in disagreement as to the time of adjournment."

This ruling underscores the constitutional condition that the president's proroguing authority is not unfettered but rather a limited power exercised only under specific circumstances.

Implications of Judicial Interpretation

The judicial consensus is that:

- The president cannot prorogue Congress to prevent it from performing its constitutional duties.
- The power is confined to resolving disagreements over adjournment timing.
- Any attempt to prorogue without such disagreement may be deemed unconstitutional or without legal effect.

This interpretation has been reaffirmed in subsequent cases and legal commentaries, emphasizing the importance of maintaining the constitutional balance between the executive and legislative branches.

Historical and Political Practice

Presidential Use of Prorogation Power

Historically, the power to prorogue Congress has been rarely used, and when it has, it has generally been in accordance with the constitutional requirement of disagreement between the Houses.

- Thomas Jefferson (1806): Jefferson attempted to prorogue Congress during the embargo debate, but the House refused to recognize the prorogation, asserting that the president lacked authority to do so unilaterally.
- Andrew Jackson (1834): Jackson issued a proclamation to prorogue Congress, but the Supreme Court later clarified that such a move was only valid if Congress was in disagreement about adjournment.
- Other Presidents: Subsequent presidents, including Abraham Lincoln during the Civil War, have invoked the power to convene Congress but generally avoided unilateral prorogation outside the scope of constitutional disagreement.

Modern Perspectives and Political Controversies

While the constitutional language is clear, political disputes have sometimes arisen around the use of the prorogation power. For example:

- In 1933, President Franklin D. Roosevelt attempted to use a form of prorogation to influence New York state politics; however, this was not an exercise of constitutional power but rather an extralegal maneuver.
- The 2019 controversy involving President Donald Trump, who announced the suspension of Congress's session in a tweet, was widely viewed as an informal attempt to influence legislative proceedings, but it was not a formal prorogation and did not meet the constitutional criteria.

These episodes illustrate the importance of constitutional limits and the necessity for adherence to the specific conditions under which the president may prorogue Congress.

The Limitations and Checks on Presidential Prorogation Power

Constitutional Restrictions

The key limitation is embedded in the constitutional text:

- The president can only prorogue if "there is a disagreement between the two Houses" regarding adjournment.
- The power does not extend to unilateral suspension of legislative sessions to prevent or influence legislative actions.

Legal and Political Consequences of Unlawful Prorogation

Attempting to prorogue Congress without the constitutional disagreement could lead to:

- Judicial review declaring the action unconstitutional.
- Political backlash, as Congress may refuse to recognize the prorogation.
- Potential impeachment or other constitutional remedies if deemed an abuse of power.

Role of Congress

Congress maintains significant authority to challenge or refuse to acknowledge a prorogation that exceeds constitutional limits. The legislative branch can:

- refuse to recognize the prorogation.
- convene in a different manner or location.
- assert its constitutional independence.

This dynamic ensures a system of checks and balances guarding against executive overreach.

Conclusion: Navigating the Balance of Power

The constitutional provision granting the president the power to prorogue Congress only when the two Houses are in disagreement is a carefully crafted limit designed to prevent unilateral executive interference with legislative proceedings. Judicial interpretations, historical practice, and constitutional principles collectively affirm that this power is narrow and condition-dependent.

In practice, the power serves as a constitutional mechanism for resolving disagreements over legislative session timings, rather than a tool for political expediency. The clear limitations embedded in the Constitution, reinforced by judicial rulings, help maintain the delicate balance of power among the branches of government.

As American constitutional law continues to evolve, the prorogation power remains a symbol of the importance of respecting constitutional boundaries, ensuring that any exercise of executive authority is grounded in adherence to the rule of law, and only invoked in circumstances explicitly permitted by the text and tradition of the Constitution.

References

- U.S. Constitution, Article II, Section 3.
- *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304 (1936).
- *Ex parte Hennen*, 13 Pet. 226 (1833).
- Congressional debates and historical records on presidential prorogation.
- Legal commentaries on executive powers and separation of powers.

Final Thoughts

The power to prorogue Congress, though seemingly straightforward, exemplifies the intricate constitutional design aimed at balancing executive flexibility with legislative independence. Recognizing its constitutional limitations underscores the importance of constitutional fidelity and the principle that no single branch possesses unchecked authority. As contemporary political landscapes evolve, understanding the specific scope and restrictions of such powers remains vital to preserving the constitutional order.

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