

STATE OF MICHIGAN LAW DAY 2006 ESSAY CONTEST
“LIBERTY UNDER LAW: SEPARATE BRANCHES, BALANCED POWERS”

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Separation of Powers: Who’s in Charge?

Suppose that the Executive Branch has become aware that a congressman has been misappropriating federal funds and selling military secrets. Should the President issue an executive order expelling the congressman from the House of Representatives?

The President should not issue an executive order expelling the congressman from the House of Representatives.

The President should not issue an executive order because the people elect the Congress. The President may have the power to appeal to the public and put political pressure on Congress, but he doesn't have the power to expel a congressman. The Constitution states in Article I Section 5, “[e]ach House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member.” If the President were to issue an order to expel a congressman, then he would be overreaching his powers, and the checks and balances established in our constitution would be meaningless.

A core democratic value that relates to this situation is popular sovereignty. Popular sovereignty means that the power of the government comes from the people and the people are the ultimate authority over the government. The people elect the congressmen and that means that the President does not and should not have the power to decide who is or is not expelled from Congress. The President can legally appoint a prosecutor and press charges, or attempt to persuade Congress to expel, but he may not issue such an order.

Powell v. McCormack, 395 U.S. 486(1969) is a U.S. Supreme Court case that was about petitioner Powell being elected to serve in the House of Representatives for the 90th Congress. He was denied membership by the adoption of House Resolution No. 278. The House's action charged that Powell had been using public funds in illegal ways and abused the process of the New York courts. He was expelled. The President was not the one who denied his membership, but members of the House of Representatives. In the case Youngstown Co. v. Sawyer, 343 U.S. 579, 585(1952), Mr. Justice Black stated, “[t]he President's power, if any, to issue [an] order must stem either from an act of Congress or from the Constitution itself.” This statement relates to the case because the Constitution clearly states that the President's power is checked by the power of Congress.

In conclusion, the people are the ones who elect their congressmen and the President cannot overrule their decision. The power of the government comes from the people and people are the authority over the government. A presidential order to expel a congressman would violate the Constitution and upset the balance of powers by interfering with the will of the people. The President should not issue an executive order to expel the congressman from the House of Representatives.