

Magruder's American Government

CHAPTER 11 *Powers of Congress*

Powers of Congress

SECTION 1 The Scope of Congressional Powers

SECTION 2 The Expressed Powers of Money and Commerce

SECTION 3 Other Expressed Powers

SECTION 4 The Implied Powers

SECTION 5 The Nonlegislative Powers

The Scope of Congressional Powers

- What are the three types of congressional power?
- How does strict construction of the U.S. Constitution on the subject of congressional power compare to liberal construction?



Section Summary

- Section 1 The Scope of Congressional Powers
- Congress has only those powers delegated (granted) to it by the Constitution.
- How those powers should be interpreted and applied—whether strictly or liberally—has been sharply debated throughout our history.

Vocabulary

- **expressed powers** - Those delegated powers of the National Government that are spelled out, expressly, in the Constitution; also called the “enumerated powers.”
- **implied powers** - Those delegated powers of the National Government that are suggested by the Constitution; those “necessary and proper” to carry out the expressed powers;
- **inherent powers** - Powers that all governments have just because they are governments
- **strict constructionist** – someone who believes the constitution should be followed exactly as it is written without adding any meaning
- **liberal constructionist** - someone who believes people can and should add their own meaning to the constitution and not necessarily follow the intent of the founding fathers
- **consensus** – reaching an agreement

Congressional Power

The Constitution grants Congress a number of specific powers in three different ways.

- (1) The **expressed powers** are granted to Congress explicitly in the Constitution.
- (2) The **implied powers** are granted by reasonable deduction from the expressed powers.
- (3) The **inherent powers** are granted through the Constitution's creation of a National Government for the United States.



Strict Versus Liberal Construction

Strict Constructionists

- **Strict constructionists**, led by Thomas Jefferson, argued that Congress should only be able to exercise (1) its expressed powers and (2) those implied powers absolutely necessary to carry out those expressed powers.

Liberal Constructionists

- **Liberal constructionists**, led by Alexander Hamilton, favored a liberal interpretation of the Constitution, a broad interpretation of the powers given to Congress.



Section 1 Review

1. The Constitution grants all of the following powers to Congress **EXCEPT**
 - (a) the expressed powers.
 - (b) the inherent powers.
 - (c) the monarchical powers.
 - (d) the reserved powers.

2. Strict constructionists favored Congress exercising
 - (a) only the expressed powers and those implied powers necessary to carry out the expressed powers.
 - (b) unlimited power.
 - (c) only the powers granted to it by State constitutions.
 - (d) powers granted to Congress through acts of the President.

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The Expressed Powers of Money and Commerce

- What powers does Congress have to tax?
- How does Congress use its power to borrow money?
- How important is Congress's commerce power?
- Why did the Framers give Congress the power to issue currency?
- How does the bankruptcy power work?

Section Summary

- Section 2 The Expressed Powers of Money and Commerce
- The Framers gave Congress the taxing power and the commerce power—two hugely important powers that it did not have under the Articles of Confederation.
- Congress has the vital power to borrow money and to create a monetary system for the country

Vocabulary

- **tax** - A charge levied by government on persons or property to meet public needs – money collected by the government
- **direct tax** - A tax that must be paid by the person on whom it is levied; see indirect tax
- **indirect tax** - A tax levied on one party but passed on to another for payment
- **deficit financing** - Practice of funding government by borrowing to make up the difference between government spending and revenue
- **public debt** - All of the money borrowed by the government and not yet repaid, plus the accrued interest on that money; also called the national debt or federal debt

Vocabulary continued

- **commerce power** - Exclusive power of Congress to regulate interstate and foreign trade
- **legal tender** - Any kind of money that a creditor must, by law, accept in payment for debts – any kind of money
- **bankruptcy** - The legal proceeding by which a bankrupt person's assets are distributed among those to whom he or she owes debts.

The Power To Tax

The Constitution gives Congress the 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....”

—Article I, Section 8, Clause 1



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Limits on the Taxing Power

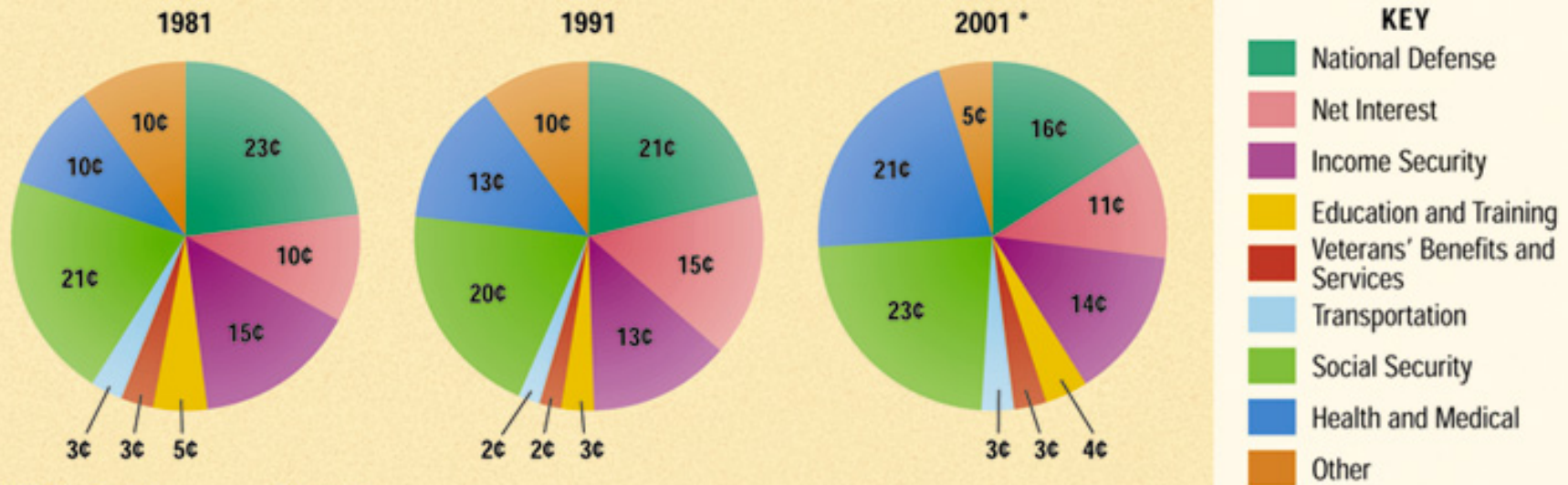
A **tax** is a charge levied by government on persons or property to meet public needs.

The Constitution places four limits on Congress's power to tax:

(1) Congress may tax only for public purposes, not for private benefit.	(2) Congress may not tax exports.
(3) Direct taxes must be apportioned among the States, according to their populations.	(4) Indirect taxes must be levied at a uniform rate in all parts of the country.

Federal Spending

Federal Spending of Tax Dollars, 1981–2001



SOURCE: Tax Foundation

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The Borrowing Power

- Article I, Section 8, Clause 2 gives Congress the power “[t]o borrow Money on the credit of the United States.”
- **Deficit financing** is the practice of spending more money than received in revenue and borrowing to make up the difference.
- The **public debt** is all of the money borrowed by the government over the years and not yet repaid, plus the accumulated interest on that money.



The Commerce Power

The **commerce power**—the power of Congress to regulate interstate and foreign trade—is granted in the Commerce Clause of the Constitution.

The Constitution places four limits on Congress's use of the commerce power:

(1) Congress cannot tax exports.	(2) Congress cannot favor the ports of one State over those of any other in the regulation of trade.
(3) Congress cannot require that "Vessels bound to, or from, one State, be obliged to enter, clear or pay Duties in another."	(4) Congress could not interfere with the slave trade (through 1808).



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The Currency and Bankruptcy Powers

The Currency Power

- Article I, Section 8, Clause 5 gives Congress the power “[t]o coin Money [and] regulate the value thereof.”
- **Legal tender** is any kind of money that a creditor must by law accept in payment for debts.

The Bankruptcy power

- Article I, Section 8, Clause 4 gives Congress the power “[t]o establish...uniform Laws on the subject of Bankruptcies throughout the United States.”
- **Bankruptcy** is the legal proceeding in which the bankrupt person’s assets are distributed among those to whom a debt is owed.

Section 2 Review

1. Which of the following is a limit on Congress's power to tax?
 - (a) only being allowed to tax for private purposes
 - (b) not being allowed to tax imports
 - (c) apportioning all direct taxes equally among the States based on population
 - (d) only being allowed to tax businesses

2. The commerce power gives Congress the right to
 - (a) regulate interstate and foreign trade.
 - (b) establish proceedings for bankruptcies.
 - (c) practice deficit financing.
 - (d) create a national currency.

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Other Expressed Powers

- What are the key sources of Congress's foreign relations powers?
- How does the power-sharing agreement between Congress and the President on the issues of war and national defense work?
- What other key powers can Congress exercise?

Section summary

- Section 3 Other Expressed Powers
- Congress shares power with the President in both defense and foreign affairs.
- Congress regulates several matters that affect everyday life—including such things as mail, weights and measures, and copyrights and patents.

Vocabulary

- **Naturalization** - The legal process by which citizens of one country become citizens of another
- **Copyright** - The exclusive, legal right of a person to reproduce, publish, and sell his or her own literary, musical, or artistic creations
- **Patent** - A license issued to an inventor granting the exclusive right to manufacture, use, or sell his or her invention for a limited period of time
- **eminent domain** - Power of a government to take private property for public use

Foreign Relations and War Powers

- Congress has the inherent power to act on matters affecting the security of the nation.
- Congress's war powers are extensive and substantial, including: the power to raise and support armies, to provide and maintain a navy, and to organize, arm, and discipline the military.
- Congress also has the power to restrict the use of American forces in combat in areas where a state of war does not exist (War Powers Resolution of 1973).



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Other Expressed Powers

Naturalization

Naturalization is the process by which citizens of one country become citizens of another.

The Postal Power

Article I, Section 8, Clause 7 says that Congress has the power “[t]o establish Post Offices and post Roads.”

Copyrights and Patents

A **copyright** is the exclusive right of an author to reproduce, publish, and sell his or her creative work.

A **patent** grants a person the sole right to manufacture, use, or sell “any new and useful art, machine, manufacture, or composition of matter.”



More Expressed Powers

Weights and Measures

Congress has the power to “fix the Standard of Weights and Measures” throughout the United States.

Judicial Powers

Congress may create all of the federal courts below the Supreme Court and structure the federal judiciary.

Congress may also define federal crimes and set punishment for violators of federal law.

Power Over Territories and Other Areas

Congress has the power to acquire, manage, and dispose of various federal areas.

One way of acquiring property is through **eminent domain**, the inherent power to take private property for public use.



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Article I, Section 8

Congressional Powers Expressed in Article 1, Section 8			
PEACETIME POWERS		WAR POWERS	
Clause	Provision	Clause	Provision
1	To establish and collect taxes, duties, and excises	11	To declare war; to make laws regarding captures on land and water
2	To borrow money	12	To raise and support armies
3	To regulate foreign and interstate commerce	13	To provide and maintain a navy
4	To create naturalization laws; to create bankruptcy laws	14	To make laws governing land and naval forces
5	To coin money and regulate its value; to regulate weights and measures	15	To provide for summoning the militia to execute federal laws, suppress uprisings, and repel invasions
6	To punish counterfeiters of federal money and securities	16	To provide for organizing, arming, and disciplining the militia and governing it when in the service of the Union
7	To establish post offices		
8	To grant patents and copyrights		
9	To create courts inferior to the Supreme Court		
10	To define and punish crimes at sea and violations of international law		
17	To exercise exclusive jurisdiction over the District of Columbia and other federal properties		
18	To make all laws necessary and proper to the execution of any of the other expressed powers		



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Section 3 Review

1. The process by which a citizen of one country becomes a citizen of another is known as
 - (a) acquisition.
 - (b) copyright law.
 - (c) eminent domain.
 - (d) naturalization.

2. All of the following are part of Congress's war powers EXCEPT
 - (a) the power to provide and maintain a navy.
 - (b) the power to raise and support armies.
 - (c) the power of eminent domain.
 - (d) the power to discipline the military.

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The Implied Powers

- How does the Necessary and Proper Clause give Congress flexibility in lawmaking?
- What key developments have occurred in the battle over the implied powers of Congress?



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Section Summary

- [Section 4 The Implied Powers](#)
- Congress has a number of important powers not set out in so many words in the Constitution.
- What Congress can and cannot do in the exercise of its implied powers has been and remains a subject of intense debate.

Vocabulary

- **appropriate** - Assign to a particular use.
- **Necessary and Proper Clause** - Constitutional clause that gives Congress the power to make all laws “necessary and proper” for executing its powers; to do what it has to do to carry out its responsibilities under the constitution
- **doctrine** - Principle or fundamental policy

The Necessary and Proper Clause

The **Necessary and Proper Clause** gives to Congress 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.”

—Article I, Section 8, Clause 18



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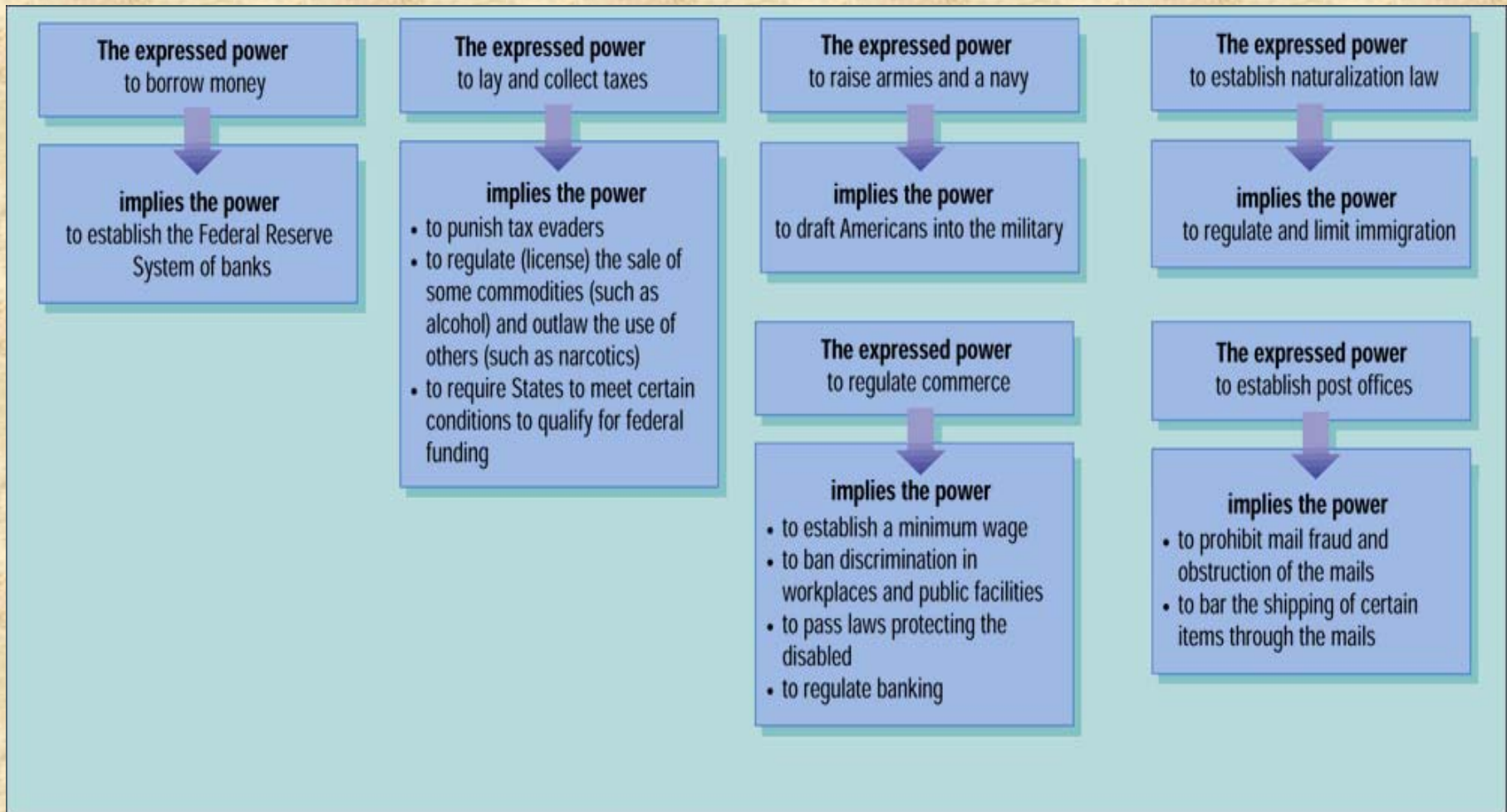
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The Battle Over Implied Powers

- The formation of the Bank of the United States spawned controversy between strict and liberal constructionists.
- In *McCulloch v. Maryland*, 1819, the formation of the Second Bank of the United States was challenged by strict constructionists.
- Chief Justice John Marshall ruled in favor of the Second Bank, giving sweeping approval to the concept of implied powers.

The Implied Powers of Congress



Section 4 Review

1. The basis for the implied powers of Congress is found in
 - (a) the Necessary and Proper Clause.
 - (b) the Implied Clause.
 - (c) the Articles of Confederation.
 - (d) the Supremacy Clause.

2. The Supreme Court upheld the idea of implied powers in its ruling in
 - (a) *Marbury v. Madison*, 1803.
 - (b) *Dred Scott v. Sandford*, 1857.
 - (c) *McCulloch v. Maryland*, 1819.
 - (d) *Ex parte Milligan*, 1866.

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The Nonlegislative Powers

- What is Congress's role in amending the Constitution and in deciding elections?
- What is Congress's impeachment power, and how has it been used in the past?
- What are Congress's executive powers?
- What is Congress's investigatory power?



Section Summary

- [Section 5 The Nonlegislative Powers](#)
- Congress may propose amendments to the Constitution with a two-thirds vote in each house.
- The House of Representatives decides a presidential election if no candidate wins a majority of electoral votes.
- The House has the power to impeach (accuse) the President and the Senate may convict (remove) an impeached President. The House has impeached two Presidents—Andrew Johnson and Bill Clinton; neither was convicted by the Senate.
- The Senate has the power to confirm or reject major presidential appointments and to approve or reject treaties.
- Congress may investigate any matter that falls within the scope of its legislative powers

Vocabulary

- **Successor** - A person who inherits a title or office – someone who comes after
- **Impeach** - To bring formal charges against a public official; the House of Representatives has the sole power to impeach civil officers of the United States
- **Acquit** - Find not guilty of a charge
- **Perjury** - The act of lying under oath
- **Censure** - Issue a formal condemnation
- **Subpoena** - An order for a person to appear and to produce documents or other requested materials.

Constitutional Amendments and Electoral Duties

Constitutional Amendments

- Article V gives Congress the power to propose amendments by a two-thirds vote in each house.

Electoral Duties

- In certain circumstances, the Constitution gives Congress special electoral duties.
- If no candidate for President receives a majority in the electoral college, the House decides the election.
- If no candidate for Vice President receives a majority in the electoral college, the Senate decides the election.
- Also, if the vice presidency is vacated, the President selects a **successor**, who faces congressional approval by a majority vote in both houses.



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Impeachment Power

- The Constitution grants Congress the power of removing the President, Vice President, or other civil officers from their office through impeachment.
- The House has the sole power to **impeach**, or bring charges against the individual.
- There is then a trial in the Senate. A two-thirds vote of the senators present is needed for conviction.
- The penalty for conviction is removal from office.



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Executive Powers

Appointments

- All major appointments made by the President must be confirmed by the Senate by majority vote.
- Only 12 of 600 Cabinet appointments to date have been declined.
- “Senatorial courtesy” is the practice in which the Senate will turn down an appointment if it is opposed by a senator of the President’s party from the State involved.

Treaties

- The President makes treaties “by and with the Advice and Consent of the Senate,... provided two thirds of the Senators present concur.”
- Presently, the President often consults members of the Senate Foreign Relations Committee.



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Investigatory Power

Congress may choose to conduct investigations through its standing committees for several reasons:

(1) to gather information useful to Congress in the making of some legislation;

(2) to oversee the operations of various executive branch agencies;

(3) to focus public attention on a particular subject;

(4) to expose the questionable activities of public officials or private persons;

(5) to promote the particular interests of some members of Congress.



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Section 5 Review

1. All of the following are nonlegislative powers of Congress EXCEPT
 - (a) selecting the President if no candidate receives a majority in the electoral college.
 - (b) nominating Cabinet positions and Supreme Court justices.
 - (c) approving executive branch appointments.
 - (d) proposing amendments to the Constitution.

2. Which of the following series of events is correct for the impeachment of a government official?
 - (a) The Supreme Court holds hearings, the House votes to impeach, a trial is held in the Senate.
 - (b) The Senate holds hearings, the Senate votes to impeach, a trial is held in the House.
 - (c) The House holds hearings, the House votes to impeach, a trial is held in the Senate.
 - (d) none of the above.

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