



Constitutional Authority Statements and Repeal Legislation

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To introduce a bill or joint resolution, [House Rule XII](#) requires Members of the House to attach a statement identifying the source of Congress's constitutional authority to enact such legislation, known as a Constitutional Authority Statement (CAS). The underlying source of constitutional authority may be clear when Congress is creating new law, but that authority is less certain when Congress seeks to repeal a law, especially a law that Congress determines it lacked the constitutional power to enact in the first place. This In Focus begins with an overview of the effect, enforceability, and implementation of the CAS requirement. It then turns to the sources of authority Members might cite for repealing federal laws, particularly when the Member views that law as unconstitutional.

CAS Overview

Legal Effect, Enforcement, and Rationale

A CAS does not have direct legal effect. It [accompanies](#) a bill or joint resolution, but it is not included in the text of the bill or joint resolution itself. Nor does a CAS proceed through the [bicameralism](#) or [presentment](#) processes necessary for legislation to become law. As a result, a CAS may be reviewed by a court as evidence of congressional intent, but it is not binding.

As a House rule, the CAS rule is [enforced internally](#) by the House. The section-by-section analysis of the rule states that “the Clerk must ensure that a statement required under this paragraph accompanies the measure,” but “is not required to evaluate the content of the statement or its adequacy,” as “those are matters to be considered by Members during consideration of the legislation.”

In 2011, when the current iteration of the CAS rule was established, the House Committee on Rules [explained](#) that “a statement outlining the power under the Constitution that Congress has to enact a proposed bill will inform and provide the basis for debate.” The committee [added](#) that the requirement also serves a civic function by “demonstrat[ing] to the American people that . . . Congress understand[s] [its] obligation under our founding document to stay within the role established therein[.]”

House Implementation of the CAS Requirement

House Rule XII [directs](#) Members of the House to identify the constitutional basis for the legislation with as much specificity as is “practicable.” CRS research indicates that, consistent with the discretion accorded by the rule, Members have invoked a wide range of sources with varying degrees of specificity. A CRS [review](#) of 2,047 bills and joint resolutions from the 114th and 115th Congresses revealed that most CASs (654) made only a general reference to [Article I, Section 8](#), of the Constitution, which lists almost all of Congress's enumerated powers to legislate. The next most cited source (500 times) was the [Necessary and Proper Clause](#), which has been [interpreted](#) as an extension of other enumerated congressional powers.

CAS in the Context of Repeals

The Constitution does [not expressly](#) address the authority of Congress to repeal a federal statutory provision. The Supreme Court has [long recognized](#), however, Congress's authority to repeal a federal statute. A statute repealing existing law need only follow the same constitutional procedures as a statute that creates new law: in *I.N.S. v. Chadha*, for instance, the Court [wrote](#) that the “repeal of statutes, no less than enactment, must conform with Art[icle] I.” The reasons Congress may enact legislation may be varied, as may be the reasons Members may want to repeal a law, including the belief (as illustrated [here](#) and [here](#)) that the law to be repealed is unconstitutional.

Members may have several options to comply with the CAS rule when a statute's unconstitutionality is the basis for the repeal legislation. First, Members may cite the same authority that Congress relied upon to pass the statute to be repealed. But a court holding that Congress did not have authority to enact that statute may impact Congress's ability to use that same authority to repeal the offending law. Second, Members could reference the constitutional power that they believe Congress exceeded when enacting the legislation to be repealed. If, for instance, Congress is persuaded that an act of Congress is beyond the scope of the [Commerce Clause](#), it could invoke that clause in the CAS. Or, if Congress believed that a statute impeded on powers reserved for the states under the [Tenth Amendment](#), a CAS could invoke that amendment.

Third, Congress could cite the [Necessary and Proper Clause](#). As then-Professor Amy Coney Barrett [wrote](#) in a coauthored law review article, Members of Congress take an oath to support the Constitution that “is widely understood” to include a duty to “observe the constitutional limits upon congressional action.” These limits are reflected in the [Vesting Clause](#) of Article I, which restricts “all legislative powers” to those enumerated in the Constitution. Alexander Hamilton [reasoned](#) that “[t]his specification of particulars evidently excludes all pretention to a general legislative authority[.]” Members may contend that the Necessary and Proper Clause is appropriate to use in this context because the power to repeal unconstitutional statutes is ancillary to the authority to pass laws and incidental to Congress's constitutional duty to adhere to its structural limits.

Fourth, Members could invoke [Article I, Section 8](#). This general reference to the enumerated powers of Congress may indicate a Member's recognition that the powers of Congress are largely confined to those listed in this Section. (Other congressional powers exist in [Article IV](#) and the [Reconstruction Amendments](#).)

In a review of the bills and joint resolutions originating in the House in the 118th Congress, at least 18 bills explicitly sought to repeal an existing federal statute (see [Table 1](#)). Among these 18 bills, Members cited Article I, Section 8, as the sole source of

constitutional authority 14 times. The Necessary and Proper Clause (Article I, Section 8, Clause 18) was the next most cited provision (3). One bill cited the Commerce Clause. These repeal bills include legislation introduced to repeal purportedly unconstitutional statutes. For example, one [bill](#) sought to repeal the [Impoundment Control Act of 1974](#) on the Member's [view](#) that the statute was unconstitutional at the outset because it infringes upon the powers of the President. The CAS accompanying that bill [referenced](#) the Necessary and Proper Clause.

Table 1. CASs for Bills to Repeal Federal Laws: 118th Congress

Bill Citation	Repeal Objective from the CAS	Authority Cited in the CAS
118 H.R. 10454	"To repeal section 138 of the Clean Air Act, relating to environmental and climate justice block grants."	Art. I, Sec. 8, cl. 18
118 H.R. 10414	"This bill repeals the Impoundment Control Act of 1974"	Art. I, Sec. 8, cl. 18
118 H.R. 10251	"To repeal certain unnecessary criminal offenses."	Art. I, Sec. 8
118 H.R. 8147	"To repeal the Corporate Transparency Act"	Art. I, Sec. 8
118 H.R. 7728	"Repeals section 115 of the Clean Air Act."	Art. I, Sec. 8
118 H.R. 7303	"To abolish the Board on Geographic Names and repeal the provisions of the Act of July 25, 1947 establishing such Board."	Art. I, Sec. 8
118 H.R. 7288	"To repeal Freedom Support Act section 907 waiver authority with respect to assistance to Azerbaijan."	Art. I, Sec. 8, cl.
118 H.R. 6563	"Repeals the section 24220 of the Infrastructure Investment and Jobs Act."	Art. I, Sec. 8
118 H.R. 6100	"To repeal the Military Selective Service Act."	Art. I, Sec. 8
118 H.R. 5037	"To amend the Family and Medical Leave Act of 1993, to repeal certain limits on leave for married individuals employed by the same employer."	Art. I, Sec. 8
118 H.R. 4445	"Repeals the 1957 Authorization for Use of Military Force."	Art. I, Sec. 8
118 H.R. 3822	"Repeals the Essential Air Service program."	Art. I, Sec. 8

Bill Citation	Repeal Objective from the CAS	Authority Cited in the CAS
118 H.R. 2860	"To amend title XVIII of the Social Security Act to repeal the Obamacare ban on provider-owned hospitals."	Art. I, Sec. 8
118 H.R. 2858	"To amend the Pension Funding Equity Act of 2004 to repeal the antitrust exemption applicable to graduate medical resident matching programs."	Art. I, Sec. 8
118 H.R. 1489	"To amend the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 to repeal the drug felon ban for participation in the supplemental nutrition assistance program under the Food and Nutrition Act of 2008."	Art. I, Sec. 8, cl. 3
118 H.R. 812	"To repeal the Inflation Reduction Act of 2022"	Art. I, Sec. 8
118 H.R. 720	"Repealing the Davis-Bacon law requiring the federal government to pay the 'prevailing wage.'"	Art. I, Sec. 8
118 H.R. 450	"This legislation repeals the National Firearms Act of 1934."	Art. I, Sec. 8

Source: CRS. Results based search of ProQuest Congressional. Search results should be construed as representative and not necessarily exhaustive.

Considerations for Congress

Given the lack of legal consequence and external enforceability, some have [raised](#) doubts about the value of the CAS rule. Some [suggest](#) that general citations (e.g., referencing all of Article I, Section 8, or a clause) may not provide insight into the constitutionality of legislation. In a law review article, former Senator Russ Feingold [proposed](#) a Senate counterpart to the House CAS rule that would, among other things, obligate a Member introducing legislation to provide a constitutional analysis of the legislation—not just a statement. A scholar has [argued](#) that the CAS rule should apply at multiple stages of the legislative process to ensure constitutional authority is considered as legislation evolves. Congress may consider these and other ideas should the House want to amend the CAS rule or the Senate seek to add a similar requirement for Senators. Congress also could continue to adopt the rule in its current form.

Dave S. Sidhu, Legislative Attorney
Madeline W. Donley, Legislative Attorney

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