

A state barber licensing statute provides that the Barber Licensing Board may revoke a barber license if it finds that a licensee has used his or her business premises for an illegal purpose.

A licensed barber in the state was arrested by federal narcotics enforcement agents on a charge of selling cocaine in his barbershop in violation of federal laws. However, the local United States Attorney declined to prosecute, and the charges were dropped.

Nevertheless, the Barber Licensing Board commenced a proceeding against the barber to revoke his license on the ground that he used his business premises for illegal sales of cocaine. At a subsequent hearing before the board, the only evidence against the barber was affidavits by unnamed informants, who were not present or available for cross-examination. Their affidavits stated that they purchased cocaine from the barber in his barbershop. Based solely on this evidence, the board found that the barber used his business premises for an illegal purpose and ordered his license revoked.

In a suit to have this revocation set aside, what is the barber's best constitutional argument?

- A. Article III requires a penalty of the kind imposed on the barber to be imposed by a court rather than an administrative agency.
- B. The administrative license revocation proceeding was invalid because it denied full faith and credit to the dismissal of the criminal charges by the United States Attorney.
- C. The barber's inability to cross-examine his accusers denied him a fair hearing and caused him to be deprived of his barber license without due process of law.
- D. The existence of federal laws penalizing the illegal sale of cocaine preempts state action relating to drug trafficking of the kind involved in the barber's case.

Explanation:

A person has a property interest in a benefit that is conferred by state law (eg, professional license, welfare benefits). The **Fourteenth Amendment due process** clause safeguards this interest by requiring states to follow certain procedures before intentionally depriving persons thereof. This typically includes providing persons with:

- adequate notice of the charges or proceedings against them *and*
- a meaningful **opportunity to be heard**—ie, to **confront adverse witnesses** and present arguments—before a neutral decision-maker.

Here, the Barber Licensing Board commenced a proceeding to revoke the barber's license. The only evidence presented against the barber was affidavits by unnamed informants, who were not present or available for cross-examination. Therefore, the barber's best argument to have his revocation set aside is that his inability to confront his accusers denied him a fair hearing and due process of law.

(Choice A) Article III limits the power of the federal courts. It does not apply to state courts or any other state proceedings (as seen here).

(Choice B) The full faith and credit clause requires states to recognize valid judgments issued by other states—not charges dismissed by the United States Attorney (or other states).

(Choice D) Under the Article IV supremacy clause, a state law is void if it is **preempted** by federal law. But federal laws penalizing the illegal sale of cocaine do *not* preempt state action relating to drug trafficking because these laws are not in conflict.

Educational objective:

Due process requires that the government provide persons with (1) adequate notice and (2) a meaningful opportunity to be heard by a neutral decision-maker—and to confront adverse witnesses—before intentionally depriving them of life, liberty, or property.

References

- *Willner v. Comm. on Character & Fitness*, 373 U.S. 96, 103 (1963) (explaining that "procedural due process often requires confrontation and cross-examination of those whose word deprives a person of his livelihood").

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Procedural due process

