

Congress enacted a statute that authorized the construction of a monument commemorating the role of the United States in liberating a particular foreign nation during World War II. Another statute appropriated \$3 million for the construction.

When the United States became involved in a bitter trade dispute with the foreign nation, the President announced that he was canceling the monument's construction and that he would not spend the appropriated funds. Although the actual reason for the President's decision was the trade dispute, the announcement stated that the reason was an unexpected rise in the federal deficit.

Assume that no other statutes apply.

Is the President's decision constitutional?

- A. No, because the President failed to invoke his foreign affairs powers in his announcement.
- B. No, because the President is obligated to spend funds in accordance with congressional directions.
- C. Yes, because the President is vested with inherent executive power to control federal expenditures.
- D. Yes, because the President's decision is a valid exercise of his foreign affairs powers.

## Explanation:

### Congress's taxing & spending powers

(U.S. Const. art. I, sec. 8, cl. 1)

#### Taxing

- Direct taxes – must be:
  - apportioned evenly among states *and*
  - reasonably related to revenue raising
- Indirect taxes – must be:
  - uniformly applied in every state *and*
  - reasonably related to revenue raising
- Export taxes – always unconstitutional

#### Spending

- Funds must be spent for general welfare
- Conditions on receipt of funds must:
  - be clearly stated & unambiguous
  - be reasonably related to federal interest in funded program
  - not require states to engage in unconstitutional activity *and*
  - not unduly coerce states into accepting

The **taxing and spending clause** gives **Congress very broad spending power**, which it exercises by proposing appropriations bills. Once an appropriations **bill becomes law**, the **President must spend the appropriated funds** as specifically **directed in the law**. That is because Article II obligates the President to take care that the laws are faithfully executed. Therefore, the President's decision not to spend the appropriated funds for the monument's construction is unconstitutional.

**(Choices A & D)** The President can never refuse to spend funds that are subject to a mandatory appropriation—even where foreign affairs are directly involved.

**(Choice C)** The Constitution does not vest the President with inherent **executive power** to control federal expenditures. Instead, the President must spend federal funds in accordance with congressional directives.

#### Educational objective:

An appropriations statute is a valid exercise of Congress's spending power. And the President must take care that the law is faithfully executed by spending the appropriated funds as specifically directed in the statute.

#### References

- U.S. Const. art. II, § 3 (take care clause).

- Train v. New York, 420 U.S. 35, 41 (1975) (requiring the EPA Administrator to spend the full amount authorized by the valid federal statute despite the President's order to withhold such funds).
- 63C Am. Jur. 2d Public Funds § 37 (2019) (explaining that the President and the executive branch do not have the power to impound congressionally appropriated funds).

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