

A new federal statute establishes a five-member commission on cultural heritage sites. The statute directs the commission to develop regulations to protect such sites on federal public lands and to implement the regulations through specified fact-finding and adjudicatory functions. The commission is not under the supervision or control of any federal agency.

Which, if any, of the following methods of appointing the commission members would be constitutional?

- A. Members are appointed by a specially designated panel of federal judges. (2%)
- B. Members are appointed by the Speaker of the House of Representatives, with the advice and consent of both houses of Congress. (11%)
- C. Members are appointed by the President, with the advice and consent of the Senate. (68%)
- D. None of these appointment methods would be constitutional. (17%)

Correct

68% Answered correctly

42 secs Time Spent

2023 Version

Explanation:

Appointment of federal officers

(Art. II, § 2 appointments clause)

Type	Examples	Appointment
Principal	Ambassador Supreme Court justice Cabinet official	Appointed by President (with Senate approval)
Inferior	Independent counsel Judicial clerk Administrative law judge	Appointed by President (with Senate approval) <i>unless</i> Congress delegates appointment to: President alone federal courts <i>or</i> heads of executive departments

A **federal officer** is someone who (1) holds a **continuing public office** and (2) has **significant discretionary authority to administer or enforce laws** (ie, executive powers). A federal officer can be a principal or an inferior federal officer, each of which has different appointment requirements under the Article II appointments clause:

Principal federal officers (eg, Cabinet secretaries) are **supervised solely by the President** and must be **appointed by the President with the Senate's advice and consent**.

Inferior federal officers are supervised by principal federal officers, and Congress may delegate their appointment to the President alone, the heads of executive-branch agencies, or the federal courts.

Here, the federal statute created a five-member cultural heritage sites commission. The members serve on the commission indefinitely (continuing public office), can develop and implement regulations (executive powers), and are not controlled or supervised by any federal agency (no superior other than the President). As a result, the members are *principal* federal officers. Therefore, the only constitutional method of appointing the members is by the President, with the advice and consent of the Senate.

(Choice A) Congress may delegate the appointment of *inferior* federal officers to the President alone, the heads of executive-branch agencies, or the federal courts. But since the commission members are *principal* federal officers, they must be appointed by the President, with the Senate's advice and consent.

(Choice B) Congress, including the Speaker of the House of Representatives, cannot appoint federal officers because Congress's participation in this executive function would violate the [separation of powers](#) doctrine.

(Choice D) The commission members are principal federal officers, so they can be appointed by the President with the advice and consent of the Senate.

Educational objective:

A federal officer is someone who (1) holds a continuing public office and (2) has significant discretionary authority to administer or enforce laws. Principal federal officers are supervised solely by the President and must be appointed by the President, with the Senate's advice and consent.

References

U.S. Const. art. II, § 2, cl. 2 (appointments clause).

Edmond v. United States, 520 U.S. 651, 659 (1997) (explaining that principal officers, including ambassadors, must be nominated by the President and confirmed by the Senate).

Buckley v. Valeo, 424 U.S. 1, 132 (1976) (stating that Congress may delegate the appointment of inferior federal officers to the President alone, the heads of executive branch agencies, or the federal courts).

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