

A newly enacted federal statute appropriates \$100 million in federal funds to support basic research by universities located in the United States. The statute provides that "the 10 best universities in the United States" will each receive \$10 million. It also provides that "the 10 best universities" shall be "determined by a poll of the presidents of all the universities in the nation, to be conducted by the United States Department of Education." In responding to that poll, each university president is required to apply the well-recognized and generally accepted standards of academic quality that are specified in the statute. The provisions of the statute are inseverable.

Which of the following statements about this statute is correct?

- A. The statute is constitutional, because Congress has plenary authority to determine the objects of its spending and the methods used to achieve them, so long as they may reasonably be deemed to serve the general welfare and do not violate any prohibitory language in the Constitution.
- B. The statute is unconstitutional, because the limitation on recipients to the 10 best universities is arbitrary and capricious and denies other high-quality universities the equal protection of the laws.
- C. The statute is unconstitutional, because the reliance by Congress on a poll of individuals who are not federal officials to determine the recipients of its appropriated funds is an unconstitutional delegation of legislative power.
- D. The validity of the statute is nonjusticiable, because the use by Congress of its spending power necessarily involves political considerations that must be resolved finally by those branches of the government that are closest to the political process.

## 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** the **power to spend** federal revenue for the **general welfare**—ie, for any public purpose. Aside from this narrow constraint, Congress has plenary (ie, absolute) authority to determine the objects of its spending and the methods used to achieve them. But when doing so, Congress cannot violate any prohibitory language in the Constitution (eg, equal protection clause).

Here, the federal statute appropriates \$100 million in federal funds to support basic research by universities located in the United States. Such research may reasonably be deemed to serve the general welfare, and the statute does not violate any prohibitory language in the Constitution. And since Congress has plenary authority to determine its spending goals and the methods for achieving them, the statute is constitutional.

**(Choice B)** **Equal protection** principles extend to all persons and organizations. And though the statute limits funding to the 10 best universities, *all* universities are eligible to receive votes and have their presidents' votes counted. Therefore, the statute does not deny other high-quality universities the equal protection of the laws.

**(Choice C)** Congress *can* **delegate** legislative power if it provides intelligible guidelines for the delegates to follow. This standard is met here since Congress has clearly directed the Department of Education to conduct a poll of university presidents and specified the standards that must be applied in responding to that poll.

**(Choice D)** Federal courts are prohibited from adjudicating **political questions**—ie, issues that (1) are reserved to the executive or legislative branch or (2) lack judicially manageable standards for resolution. But since courts regularly determine the constitutionality of federal statutes, this prohibition does not apply.

**Educational objective:**

The taxing and spending clause gives Congress broad power to spend federal revenue, as long as the spending (1) is for the general welfare and (2) does not violate any prohibitory language in the Constitution.

**References**

- South Dakota v. Dole, 483 U.S. 203, 207–08 (1987) (explaining that Congress's spending power must serve a public purpose and cannot violate any prohibitory language of the Constitution).

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