

Congress passed a statute directing the United States Forest Service, a federal agency, to issue regulations to control campfires on federal public lands and to establish a schedule of penalties for those who violate the new regulations. The statute provides that the Forest Service regulations should "reduce, to the maximum extent feasible, all potential hazards that arise from campfires on Forest Service lands."

The Forest Service issued the regulations and the schedule of penalties directed by Congress. The regulations include a rule that provides for the doubling of the fine for any negligent or prohibited use of fire if the user is under the influence of alcohol or drugs.

Which of the following arguments best supports a finding that the rule providing for the fines is constitutional?

- A. The executive branch of government, of which the Forest Service is part, has inherent rule-making authority over public lands.
- B. The rule is justified by a compelling government interest in safeguarding forest resources.
- C. The rule relates directly to law enforcement, which is an executive rather than a legislative function, and hence it does not need specific congressional authorization.
- D. The rule was issued pursuant to a valid exercise of Congress's power to delegate rule-making authority to federal agencies.

Explanation:

The **nondelegation doctrine** prohibits Congress from delegating its exclusive legislative powers (eg, making or repealing laws). But **Congress can delegate** its **incidental powers** (eg, rule-making authority) if it provides an **intelligible principle**—ie, a clear statement defining:

- the **policy** Congress seeks to advance (eg, reduce campfire hazards on Forest Service lands)
- the **agency** to carry out that policy (eg, the United States Forest Service) *and*
- the **scope** of that agency's authority (eg, issue campfire regulations and establish a penalty schedule).

Since Congress properly delegated its rule-making authority to the United States Forest Service, its rule doubling the fine for a fire if the user is under the influence of alcohol or drugs is likely constitutional.

(Choice A) The Article IV property clause gives Congress (not the executive branch) inherent rule-making authority over federal lands. But Congress can delegate this incidental power to executive agencies.

(Choice B) The rule would only have to be justified by a compelling government interest—ie, satisfy strict scrutiny—if it substantially impacted a fundamental right or intentionally discriminated against a **suspect class** (not seen here).

(Choice C) Although law enforcement is an executive function, it must be exercised pursuant to congressional authorization (ie, federal law).

Educational objective:

Congress can delegate incidental legislative powers to federal agencies if it provides an intelligible principle—ie, a clear statement defining (1) the *policy* Congress seeks to advance, (2) the *agency* to carry out that policy, and (3) the *scope* of that agency's authority.

References

- *Gundy v. United States*, 139 S. Ct. 2116, 2123 (2019) (explaining that the nondelegation doctrine allows Congress to delegate power as long as it provides an intelligible principle to guide the delegate's use of discretion).

Copyright © 2014 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.

Nondelegation doctrine

