

"Look-alike drugs" is the term used to describe nonprescription drugs that look like narcotic drugs and are sold on the streets as narcotic drugs. After extensive hearings, Congress concluded that the sale of look-alike drugs was widespread in this country and was creating severe health and law-enforcement problems. To combat these problems, Congress enacted a comprehensive statute that regulates the manufacture, distribution, and sale of all look-alike drugs in the United States.

Which of the following sources of constitutional authority can most easily be used to justify the authority of Congress to enact this statute?

- A. The commerce clause.
- B. The enforcement powers of the Fourteenth Amendment.
- C. The general welfare clause.
- D. The spending power.

Explanation:

Commerce power to regulate

activities that substantially affect interstate commerce

To determine if Congress can regulate, consider whether:

- activity is economic in nature (then substantial effect presumed)
- jurisdictional element limits reach to activities with direct connection to interstate commerce
- express congressional findings that activity substantially affects interstate commerce *and*
- strong link between activity & effect on interstate commerce

Congress's **extensive power to regulate** interstate commerce extends to nearly all activities that (1) involve two or more states or (2) have a **substantial effect on interstate commerce**. To determine whether activities have a substantial effect that triggers Congress's commerce power, courts consider whether:

- the activities are **economic in nature** (if so, a substantial effect is **presumed**)
- the regulation has a **jurisdictional element** that limits its reach to activities with a direct connection to or effect on interstate commerce
- there are **express congressional findings** concerning the activities' effect on interstate commerce *and*
- there is a **strong link** between the regulated activities and that effect.

Here, the commerce clause most easily justifies Congress's enactment of a statute that regulates the manufacture, distribution, and sale of look-alike drugs. That is because, while some of these activities may only occur in one state (eg, manufacturing), all of them are *economic* in nature. It is therefore presumed that these activities have a substantial effect on interstate commerce and are subject to Congress's commerce powers.

(Choice B) The Fourteenth Amendment enforcement clause authorizes Congress to enact legislation enforcing the amendment's **other provisions**. But those other provisions only apply to state actors—not the private individuals likely selling look-alike drugs here.

(Choices C & D) The taxing and spending clause (ie, general welfare clause) gives Congress the power to tax and spend for the general welfare. But here, the comprehensive statute regulating the manufacture, distribution, and sale of look-alike drugs goes beyond merely taxing and spending.

Educational objective:

An activity is presumed to have a substantial effect on interstate commerce that warrants regulation by Congress when the activity is *economic* in nature.

References

- Gonzales v. Raich, 545 U.S. 1, 32–33 (2005) (upholding the constitutionality of a federal drug law since in-state marijuana cultivation substantially affects interstate commerce).

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