

Congress enacted a statute directing U.S. ambassadors to send formal letters to the governments of their host countries, protesting any violations by those governments of international treaties on weapons sales. The President prefers to handle violations by certain countries in a less formal manner and has directed ambassadors not to comply with the statute.

Is the President's action constitutional?

- A. No, because Congress has the power to implement treaties, and therefore the statute is binding on the President.
- B. No, because Congress has the power to regulate commerce with foreign nations, and therefore the statute is binding on the President.
- C. Yes, because Congress has no jurisdiction over matters outside the U.S. borders.
- D. Yes, because the President and his subordinates are the exclusive official representatives of the United States in foreign affairs.

Explanation:

Article II vests the **President** with authority over a wide array of domestic and foreign policy areas. When the President shares authority with Congress over a particular area (eg, federal agencies), the validity of the President's actions is determined by the *Youngstown framework*. But when the President **does not share authority** with Congress, the President can exercise that exclusive Article II power without adhering to congressional directives.

One **exclusive Article II power** is the authority to **communicate** and negotiate **with foreign governments** as the official U.S. representative in foreign affairs. The President can exercise this power directly or through his/her subordinates—including ambassadors and other executive-branch officials. Therefore, it was constitutional for the President to direct the ambassadors not to comply with the federal statute regarding formal letters to foreign governments.

(Choice A) Congress has the power to implement treaties through appropriate legislation under the necessary and proper clause. But such legislation cannot restrict the President's ability to exercise an *exclusive* Article II power (as seen here).

(Choices B & C) Congress has *some* jurisdiction over matters outside U.S. borders—eg, the power to declare war and to regulate commerce with foreign nations. But this does not give Congress the power to bind the President (or his/her subordinates) on matters within the President's exclusive authority.

Educational objective:

When the President does not share power with Congress over a particular area—eg, communicating with foreign governments—the President can exercise that exclusive Article II power without congressional interference.

References

- United States v. Curtiss-Wright Exp. Corp., 299 U.S. 304, 319 (1936) (stating that "the President alone has the power to speak or listen as a representative of the nation").

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Assessing the validity of presidential actions

