

National statistics revealed a dramatic increase in the number of elementary and secondary school students bringing controlled substances to school for sale. In response, Congress enacted a statute requiring each state's legislature to enact a law making it a crime for any person to sell, within 1,000 feet of any elementary or secondary school, any controlled substance that had previously been transported in interstate commerce.

Is the federal statute constitutional?

- A. No, because Congress has no authority to require a state legislature to enact any specified legislation.
- B. No, because the sale of a controlled substance in close proximity to a school does not have a sufficiently close nexus to interstate commerce to justify its regulation by Congress.
- C. Yes, because Congress possesses broad authority under the commerce clause to regulate any activities affecting education that also have, in inseverable aggregates, a substantial effect on interstate commerce.
- D. Yes, because it contains a jurisdictional provision that will ensure, on a case-by-case basis, that any particular controlled substance subject to the terms of this statute will in fact affect interstate commerce.

Explanation:

The Article I **commerce clause** empowers Congress to **regulate interstate commerce**—ie, nearly all activities involving two or more states. But when exercising this power, Congress cannot violate other constitutional provisions. This includes the **Tenth Amendment**, which **prohibits Congress** from **commandeering state or local legislatures** by requiring them to **enact laws** (or to enforce federal laws).

Here, the federal statute *requires* state legislatures to criminalize the sale, near a school, of any controlled substance that had previously been transported in interstate commerce. But even if Congress could regulate this conduct pursuant to its commerce power, it has no authority to require a state legislature to enact any specified legislation. Therefore, the federal statute is unconstitutional.

(Choices B & C) Congress can regulate any in-state activity that, singly or in the aggregate, substantially impacts interstate commerce. Here, national statistics show a dramatic increase in the number of students selling controlled substances at school. This suggests that the combined (ie, aggregated) sales have a substantial effect on interstate commerce. As a result, Congress can likely regulate that activity—but it cannot require states to do so.

(Choice D) The commerce clause also empowers Congress to regulate instrumentalities of, and persons or things moving in, interstate commerce—including controlled substances that have been *transported* in interstate commerce (as seen here). Nevertheless, the statute is invalid since it violates the Tenth Amendment.

Educational objective:

The commerce clause empowers Congress to regulate interstate commerce. But the Tenth Amendment prohibits Congress from requiring state or local legislatures to enact laws (or to enforce federal laws) that do so.

References

- New York v. United States, 505 U.S. 144, 161 (1992) (holding that Congress cannot require state legislatures to enact or enforce certain legislation).

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

Copyright © UWorld. All rights reserved.

Tenth Amendment anti-commandeering principle (state immunity from federal law)

Congress cannot require that states:



OR

enact state laws

S. B. no. 140

AN ACT

Lorem ipsum dolor sit amet, consectetur adipiscing elit, sed do eiusmod tempor incididunt ut labore et dolore magna aliqua. Excepteur sint occaecat cupidatat non proident, sunt in culpa qui officia deserunt mollit anim id est laborum. Nemo enim ipsam sit aspernatur aut odit aut fugit, sed quia consequuntur magni voluptatem sequi nesciunt. Neque porro quisquam est, qui dolorem ipsum quia dolor sit amet, consectetur, adipisci velit, sed quia non numquam eius modi tempora incidunt ut labore et dolore magnam aliquam quaerat.

**ENACTED AS DIRECTED BY CONGRESS
BY THE LEGISLATURE OF THE STATE.**

enforce federal laws



[← Previous](#)