

A congressional committee investigated the pharmaceutical industry and found that the high cost of prescription drugs purchased and sold in the United States negatively impacted the nation's economy and the health of its citizens. In response, Congress passed a statute that regulates "the retail prices of every purchase or sale of prescription drugs in the United States."

A group of pharmaceutical companies challenged the constitutionality of this statute in federal court.

What is the strongest argument in support of the constitutionality of this statute?

- A. Congress may enact statutes for the general welfare.
- B. Congress may regulate the prices of all domestic purchases and sales of goods.
- C. The Constitution grants Congress the power to regulate the interstate transportation of prescription drugs.
- D. The purchases and sales of prescription drugs in the United States substantially impact interstate commerce in the aggregate.

### Explanation:

The **commerce clause** gives **Congress** broad power to regulate **interstate and foreign commerce**. This includes:

- the **channels** of interstate and foreign commerce (eg, roadways)
- the **instrumentalities** of interstate and foreign commerce (eg, vehicles)
- **persons and things** moving in interstate or foreign commerce (eg, goods and services) *and*
- **in-state activities** that, singly or in the aggregate, **substantially impact** interstate or foreign commerce.

Since Congress's commerce power is broad, federal statutes are **constitutional** if there is any **rational basis** for concluding that the regulated activity substantially affects interstate or foreign commerce. This can be shown through express congressional findings.

Here, the federal statute regulates the retail prices of prescription drugs in the United States. Congress has the authority to regulate such products' interstate transportation, but this statute also regulates in-state purchases and sales (**Choice C**). Since the congressional committee found that the high cost of prescription drugs negatively impacted the nation's economy, it is rational to conclude that their aggregated in-state purchases and sales substantially impact interstate commerce. Therefore, this is the strongest argument to support this statute.

**(Choice A)** The taxing and spending clause empowers Congress to tax and spend for the general welfare. But regulating prices is not equivalent to taxing or spending.

**(Choice B)** Congress cannot regulate the prices of *every* domestic purchase and sale of goods since it cannot regulate purely in-state sales that do not substantially affect interstate commerce.

### Educational objective:

The commerce clause empowers Congress to regulate (1) channels and instrumentalities of, (2) persons and things moving in, and (3) in-state activities that—singly or in the aggregate—substantially affect interstate or foreign commerce.

### References

- *Gonzales v. Raich*, 545 U.S. 1, 17 (2005) (explaining Congress's broad authority under the commerce clause).

## Commerce clause challenge

