

A federal statute prohibits the construction of nuclear energy plants in this country without a license from the Federal Nuclear Plant Siting Commission. The statute provides that the Commission may issue a license authorizing the construction of a proposed nuclear energy plant 30 days after the Commission makes a finding that the plant will comply with specified standards of safety, technological and commercial feasibility, and public convenience. In a severable provision, the Commission's enabling statute also provides that Congress, by simple majorities in each house, may veto the issuance of a particular license by the Commission if such a veto occurs within 30 days following the required Commission finding.

Early last year, the Commission found that an energy corporation met all statutory requirements and, therefore, voted to issue the corporation a license authorizing it to construct a nuclear energy plant. Because they believed that the issuance of a license to the corporation was not in accord with the applicable statutory criteria, a majority of each of the two houses of Congress voted, within the specified 30-day period, to veto the license. On the basis of that veto, the Commission refused to issue the license.

Subsequently, the corporation sued the Commission in an appropriate federal district court, challenging the constitutionality of the Commission's refusal to issue the license.

In this suit, how should the court rule regarding the congressional veto of the energy corporation's license?

- A. The veto is invalid, because any determination by Congress that particular agency action does not satisfy statutory criteria violates Article III, Section 1 of the Constitution because it constitutes the performance of a judicial function by the legislative branch.
- B. The veto is invalid, because Article I, Section 7 of the Constitution has been interpreted to mean that any action of Congress purporting to alter the legal rights of persons outside of the legislative branch must be presented to the President for his signature or veto.
- C. The veto is valid, because Congress has authority under the commerce clause to regulate the construction of nuclear energy plants.
- D. The veto is valid, because there is a compelling national interest in the close congressional supervision of nuclear-plant siting in light of the grave dangers to the public health and safety that are associated with the operation of such plants.

Explanation:

Article I grants all federal legislative power to **Congress**, which consists of the House of Representatives and the Senate. Article I also prescribes the method Congress must use to take **legislative action**—ie, any action that alters the legal rights of persons outside of the legislative branch. Under this method, all legislative action must be:

- approved by both houses of Congress (ie, **bicameralism**) *and*
- presented to the President for approval or disapproval (ie, **presentment**).

As a result, **congressional vetoes** are **always invalid** since they attempt to overturn agency actions without adhering to the proper method of bicameralism and presentment.

Here, the federal statute authorizes an agency to issue licenses for the construction of nuclear energy plants. Pursuant to this statute, the agency voted to issue a license to an energy corporation. But the statute also includes a provision allowing Congress, by majority vote of both houses, to veto the agency's issuance of a license. And though a majority of each house of Congress voted to veto the corporation's license (bicameralism), the veto was not presented to the President (no presentment). Therefore, this legislative action is invalid.

(Choice A) Article III, section 1 gives federal courts the power to resolve [cases and controversies](#). This precludes Congress from issuing a judgment in individual cases. But Congress can still make a nonbinding determination (eg, through a resolution) that particular agency action does not satisfy statutory criteria.

(Choice C) Congress can regulate the construction of nuclear energy plants under the [commerce clause](#) since the production of energy substantially impacts interstate commerce. But Congress must do so through bicameralism and presentment.

(Choice D) Congressional vetoes are always invalid—even when they are supported by a compelling national interest (eg, public health and safety).

Educational objective:

Congressional vetoes are always invalid since they attempt to overturn agency actions without adhering to the proper method for legislative action—ie, bicameralism and presentment.

References

- *INS v. Chadha*, 462 U.S. 919, 959 (1983) (striking down a congressional-veto provision in a federal immigration statute).

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**Federal legislative process
(requirements for legislative action)**

