

The vaccination of children against childhood contagious diseases (such as measles, diphtheria, and whooping cough) has traditionally been a function of private doctors and local and state health departments. Because vaccination rates have declined in recent years, especially in urban areas, the President proposes to appoint a Presidential Advisory Commission on Vaccination which would be charged with conducting a national publicity campaign to encourage vaccination as a public health measure.

No federal statute authorizes or prohibits this action by the President.

The activities of the Presidential Advisory Commission on Vaccination would be financed entirely from funds appropriated by Congress to the Office of the President for "such other purposes as the President may think appropriate."

May the President constitutionally create such a commission for this purpose?

- A. No, because Congress has not specifically authorized the creation and support of such a new federal agency.
- B. No, because the protection of children against common diseases by vaccination is a traditional state function and, therefore, is reserved to the states by the Tenth Amendment.
- C. Yes, because the President has plenary authority to provide for the health, safety, and welfare of the people of the United States.
- D. Yes, because this action is within the scope of executive authority vested in the President by the Constitution, and no federal statute prohibits it.

## Explanation:

**Article II** gives the **President** the power to manage the executive branch. Pursuant to this power, the President can use congressional funds to create advisory commissions that will recommend and promote policies. **Congress can limit** the President's powers when they **share authority** over an area (eg, use of federal funds). The **Youngstown framework** is then used to determine the **extent of the President's authority**. And when **Congress is silent**, the President's action is **valid so long as** it:

- falls within the President's **Article II powers** *and*
- does **not interfere** with another branch's powers.

Here, the President proposes an advisory commission that would encourage vaccination and be financed entirely from funds already appropriated for Presidential use. Congress is silent on the President's proposal since no federal statute authorizes or prohibits it. And since the President is acting within the scope of his Article II executive authority and is not interfering with another branch's powers, he may constitutionally create the commission.

**(Choice A)** Specific congressional authorization is not needed since the President is establishing an advisory commission—not a new federal agency with rule-making powers (eg, Securities and Exchange Commission).

**(Choice B)** All powers that the Constitution does not expressly give to the federal government—including the police power to protect children against common diseases—are reserved to the states by the Tenth Amendment. But the President has the power to establish advisory commissions on traditional state functions like protecting child welfare.

**(Choice C)** The President does *not* have plenary (ie, absolute) authority to provide for the health, safety, and welfare of the people of the United States. Instead, the President must comply with the Constitution and relevant federal statutes.

## Educational objective:

When Congress has remained silent about the President's actions in an area over which they share authority, those actions are valid so long as they (1) fall within the President's Article II powers and (2) do not interfere with another branch's powers.

## References

- *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635–38 (1952) (Jackson, J., concurring) (setting forth the tripartite framework for analyzing the constitutionality of presidential actions).

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**Assessing the validity of presidential actions  
(*Youngstown* framework)**

