

Congress enacted a statute over the President's veto establishing a program to protect areas in the United States that are rich in biological diversity. The program is consistent with the terms of an environmental treaty that the President objected to and did not sign.

The statute creates an executive agency and authorizes it to designate parts of federal lands for inclusion in the program in accordance with criteria taken from the treaty. In an inseverable provision, the statute further provides that the agency must report each designation to a committee of Congress and that the committee may overturn the agency's designation by a majority vote.

Why is the statute unconstitutional?

- A. It authorizes a committee of Congress to overturn an executive decision.
- B. It constitutes an invalid delegation of legislative authority to an executive agency.
- C. It interferes with the exercise of the President's paramount authority in foreign affairs.
- D. It requires an executive agency to report its decisions to Congress.

## Explanation:

The **nondelegation doctrine** prohibits Congress from delegating purely legislative powers (eg, making or repealing laws). But it allows **Congress** to **delegate** its **incidental powers** (eg, regulating federal lands) to executive agencies if it provides an **intelligible principle**—ie, a clear statement defining:

- the **policy** Congress seeks to advance (eg, protect areas in the United States that are rich in biodiversity)
- the **agency** to carry out that policy (eg, the agency created by statute here) *and*
- the **scope** of that agency's authority (eg, designate parts of federal lands for inclusion in the environmental protection program) **(Choice B)**.

But once Congress has delegated authority to an executive agency, **Congress cannot** authorize a committee to **veto** (ie, overturn) that agency's **executive decisions**. Such decisions can only be overturned through **new legislation**, which requires:

- **bicameralism**—which entails a majority vote in both the House of Representatives and the Senate (not merely a congressional committee)—*and*
- **presentment** to the President for approval or disapproval (which did not occur here).

Therefore, the statute is unconstitutional because it authorizes a committee of Congress to overturn an executive decision.

**(Choice C)** Article II gives the President paramount authority in foreign affairs, so Congress could not have forced the President to sign the environmental treaty. But since Congress has the power to enact *domestic* laws, it can implement this program protecting areas in the United States despite the President's objection to the treaty.

**(Choice D)** Congress can require executive agencies to *report* their decisions to Congress if this is necessary and proper for (ie, reasonably related to) implementing federal law. But Congress cannot *veto* executive agency decisions without adhering to bicameralism and presentment.

## Educational objective:

Congress can only overturn an executive agency's actions by enacting new legislation. This requires both (1) passage by majority vote in the House of Representatives and the Senate (ie, bicameralism) and (2) presentation to the President for approval or disapproval (ie, presentment).

## References

- *Gundy v. United States*, 139 S. Ct. 2116, 2123 (2019) (explaining that the nondelegation doctrine allows Congress to delegate power as long as it provides an intelligible principle to guide the delegate's use of discretion).
- *INS v. Chadha*, 462 U.S. 919, 946–59 (1982) (striking down the congressional-veto provision of an immigration statute since it bypasses bicameralism and presentment).

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

