

Congress enacted a statute that annually awards federal funds to states that must be used to improve the quality of public education. Every state agreed to participate in this federal program. On average, the funds awarded by the federal program comprise 15% of a state's overall annual budget.

Several years later, Congress enacted another statute that expanded this federal program to reduce the academic achievement gap between high-performing and low-performing public schools. A provision of this federal statute requires states to administer a statewide academic test to students that is then used to assess the academic performance of public schools. States that choose not to comply with this testing requirement will no longer receive any federal funding from the program and may suffer budgetary shortfalls as a result.

A state that has chosen not to comply with the testing requirement has sued the federal government, arguing that the statute's provision is unconstitutional.

Which of the following is the state's best argument?

- A. Incentivizing states to adopt federal policies exceeds the scope of Congress's spending power.
- B. The condition placed on the receipt of federal funding is unduly coercive.
- C. The funding of public education has traditionally been performed by the states.
- D. The Tenth Amendment grants states immunity from direct federal regulation.

Explanation:

Conditional federal funding

(Article I, section 8 spending clause)

Conditions must meet all the following criteria:

- clearly stated & unambiguous
- reasonably related to federal interest in funded program
- do not require states to engage in unconstitutional activity
- do not unduly coerce states into accepting

The **taxing and spending clause** gives Congress broad discretion to spend for the general welfare, such as improving the quality of public education. Congress can use this spending power to incentivize states to adopt federal policies by **placing appropriate conditions** on the **receipt of federal funds (Choice A)**. A condition is **appropriate when** it:

- is **clear and unambiguous** (eg, requiring states to comply with the testing requirement or lose federal funding)
- is **reasonably related** to the purpose for which the funds will be expended (eg, requiring academic testing to reduce the academic achievement gap)
- does **not require** recipients to engage in **unconstitutional activity** (eg, developing and administering a statewide academic test is not unconstitutional) *and*
- is **not unduly coercive**.

A condition is unduly coercive if it amounts to a "gun to the head" of a state. Although SCOTUS has not provided concrete guidance on how to make this determination, it has invalidated a condition that would have withheld 10% of a state's overall budget.*

Here, the condition on the receipt of federal funding would withhold 15% of an average state's annual budget. This amounts to a "gun to the head" and is unduly coercive since states that do not comply with this condition may suffer significant budgetary shortfalls. Therefore, this is the state's best argument that the provision is unconstitutional.

*In contrast, SCOTUS has upheld a condition that withheld less than 1% of a state's overall budget.

(Choice C) Although the funding of public education has traditionally been performed by the states, the spending clause gives Congress the power to spend for the general welfare—including public education.

(Choice D) The **Tenth Amendment** grants states immunity from federal regulations that compel or unduly coerce them to enact state laws or enforce federal laws. However, states must comply with other types of direct federal regulation (eg, EPA pollution standards).

Educational objective:

Congress may use its spending power to regulate states by placing conditions on the receipt of federal funds that (1) are clear and unambiguous, (2) are reasonably related to the purpose for which the funds will be expended, (3) do not require recipients to engage in unconstitutional activity, and (4) are not unduly coercive.

SCOTUS = Supreme Court of the United States; **EPA** = Environmental Protection Agency.

References

- U.S. Const. art. I, § 8, cl. 1 (taxing and spending clause).
- South Dakota v. Dole, 483 U.S. 203, 212 (1987) (holding that Congress can place a condition on the receipt of federal highway funding that amounts to less than 1% of a state's overall budget).
- Nat'l Fed'n of Indep. Bus. v. Sebelius, 567 U.S. 519, 581–82 (2012) (explaining that Congress cannot place a condition on the receipt of Medicaid funds that amounts to 10% of a state's overall spending).