

A Senate investigative committee released a report identifying three U.S. citizens as individuals who were organizing support for terrorist activities. All three were employed by the U.S. government as park rangers.

In response, Congress enacted a statute naming these three individuals and providing that they could not hold any position of employment with the federal government.

Which of the following constitutional provisions provides the best means for challenging the constitutionality of the statute?

- A. The bill of attainder clause.
- B. The due process clause.
- C. The ex post facto clause.
- D. The takings clause.

Explanation:

Prohibited legislation

Bill of attainder clauses Prohibit legislative acts that inflict *civil or criminal* punishment against identified persons (or groups of persons) without a trial

Ex post facto clauses Prohibit enactment of retroactive *criminal* laws that:

- criminalize previously legal conduct
- impose greater punishment than previously prescribed
- eliminate previously available defenses
- decrease prosecution's previous burden of proof

The Article I **bill of attainder** clauses prohibit federal and state **legislative acts** that inflict **civil or criminal punishment** on **named persons**—or easily identifiable groups of persons—**without a judicial trial**. Here, the federal statute bars three *named* park rangers from federal government employment. And since this constitutes a civil punishment that is imposed without a trial, the statute is an unconstitutional bill of attainder.

(Choice B) The Fifth Amendment due process clause requires the government to provide persons with notice and a meaningful opportunity to be heard before depriving them of a [life, liberty, or property interest](#). Public employment is a property interest when the employee (1) has an ongoing employment contract, (2) can only be fired for cause, or (3) receives assurances of continued employment—none of which apply here.

(Choice C) The ex post facto clauses bar legislative acts that impose retroactive *criminal* punishments—ie, punish conduct that occurred before the law was enacted. Although the rangers' alleged support of terrorism occurred before the statute was enacted, their exclusion from government employment is a *civil* punishment.

(Choice D) The Fifth Amendment [takings clause](#) prohibits the government from taking private property for public use without just compensation. But this clause applies to real or personal property—not interests in public employment.

Educational objective:

The bill of attainder clauses prohibit legislative acts that inflict civil or criminal punishment on named individuals—or easily identifiable groups of individuals—without a trial. Exclusion from a profession or vocation is a type of civil punishment.

References

- U.S. Const. art. I, § 9 (prohibits the federal government from enacting bills of attainder).

- United States v. Lovett, 328 U.S. 303, 315–16 (1946) (holding that a congressional act that excludes a specific person from a profession or vocation without a trial is an unconstitutional bill of attainder).

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