

A federally owned and operated office building located in a state is heated with a new, pollution-free heating system. However, in the coldest season of the year, this new system is sometimes insufficient to supply adequate heat to the building. The federal appropriation statute providing the money for construction of the new heating system permitted use of the old, pollution-generating system when necessary to supply additional heat. When the old heating system operates (only about two days in any year), the smokestack of the building emits smoke that exceeds the state's pollution-control standards.

May the operators of the federal office building be prosecuted successfully by state authorities for violating that state's pollution-control standards?

- A. No, because the operations of the federal government are immune from state regulation in the absence of federal consent.
- B. No, because the violations of the state pollution-control standards involved here are so insignificant that they are beyond the legitimate reach of state law.
- C. Yes, because the regulation of pollution is a joint concern of the federal government and the state and, therefore, both of them may regulate conduct causing pollution.
- D. Yes, because the regulation of pollution is a legitimate state police power concern.

Explanation:

Under the Article VI [supremacy clause](#), the U.S. Constitution, federal laws, and treaties are the supreme law of the land. As a result, the **operations of the federal government**—including those of its agencies and instrumentalities—are **completely immune** from **state regulation** in the **absence of congressional consent**. And since Congress did not consent to the state's pollution-control standards in this instance, the operators of the federal office building cannot be successfully prosecuted for violating them.

(Choice B) All federal government violations of state regulations—insignificant or otherwise—are beyond the reach of state law unless Congress consented to the regulation.

(Choice C) Both the federal and state governments may regulate pollution. But the supremacy clause prevents states from enforcing their regulations against the federal government without congressional consent.

(Choice D) The Tenth Amendment reserves to states the broad police power to enact and enforce laws that are reasonably related to protecting public health, safety, and welfare—eg, regulating pollution. But when exercising this power, states cannot violate other constitutional provisions like the supremacy clause (as seen here).

Educational objective:

The operations of the federal government—including those of its agencies and instrumentalities—are completely immune from state regulation unless Congress consents.

References

- Arizona v. California, 283 U.S. 423, 451 (1931) (explaining that "[t]he United States may perform its functions without conforming to the police regulations of a State").

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Federal immunity from state tax/regulation

