

A national coalition of activists announced that it would be holding a rally at the Capitol to protest federal laws that criminalize the possession or use of cannabis. The rally has been advertised as a "smoke-in," where the activists would smoke cannabis during the protest.

The President, who has recently announced her support for the decriminalization of recreational cannabis under federal law, does not want any of the activists to face criminal charges for participating in the rally. The President has proposed to grant a group pardon to the activists before the rally begins.

May the President constitutionally grant this pardon?

- A. No, because the President may not grant a pardon before a federal offense has been committed.
- B. No, because the President may not grant a pardon to a group of people.
- C. Yes, because the President may grant a pardon for federal offenses.
- D. Yes, because the President's power to pardon is plenary.

Explanation:

Exclusive executive powers

- Nominate principal officers
- Veto bills
- Prosecute & pardon federal offenses
- Communicate & negotiate with foreign governments
- Recognize foreign governments
- Enter executive agreements

Article II of the Constitution vests the **President** with plenary (ie, absolute) **power to grant reprieves and pardons** to persons or groups of people that have committed federal offenses—except in cases of impeachment (**Choices C & D**). But the President may grant a pardon **only *after* the federal offense has been committed**—not before. Since the President here seeks to grant a group pardon to the activists *before* they commit a federal offense by smoking cannabis at the rally, she may not constitutionally grant this pardon.

(Choice B) A President *may* grant a pardon to a group of people who have committed a federal offense. For example, President Carter granted a group pardon to every person who avoided the military draft during the Vietnam War.

Educational objective:

Article II of the Constitution vests the President with plenary power to generally grant pardons to individuals or groups that have committed federal offenses. But a pardon cannot be granted *before* the federal offense has been committed.

References

- U.S. Const. art. II, § 2, cl. 1 (vesting the President with the power to grant reprieves and pardons).
- *Ex Parte Garland*, 71 U.S. (4 Wall) 333, 380 (1866) (explaining that a pardon can be granted only after a federal offense has been committed).