

Congress passed a bill prohibiting the President from granting a pardon to any person who has not served at least one-third of the sentence imposed by the court that convicted the person. The President vetoed the bill, claiming that it was unconstitutional. Nevertheless, Congress passed it over his veto by a two-thirds vote of each house.

Is this act of Congress constitutional?

- A. No, because a presidential veto based upon constitutional grounds may be overridden only with the concurrence of three-fourths of the state legislatures.
- B. No, because it interferes with the plenary power of the President to grant pardons.
- C. Yes, because it is a necessary and proper means of carrying out the powers of Congress.
- D. Yes, because it was enacted over the President's veto by a two-thirds vote of each house.

Explanation:

The Constitution gives each branch of government separate and distinct powers that generally cannot be exercised by another branch. This establishes a system of **checks and balances** that prevents concentration of power. The **President** (ie, executive branch) has the distinct **power to enforce laws**. This includes the plenary (ie, absolute) power to **grant reprieves and pardons** to persons who commit federal offenses (except in cases of impeachment). And since the other branches cannot interfere with this power in any way, this act of Congress is unconstitutional.

(Choice A) Article II grants the President the power to veto a bill for any reason, which can only be overridden by a two-thirds vote in each house of Congress. A three-fourths vote of the state legislatures is generally part of the constitutional [amendment process](#)—not the federal [legislative process](#).

(Choice C) The necessary and proper clause gives Congress the power to use reasonably appropriate means to carry out its other powers. But it cannot violate other constitutional provisions when doing so (as seen here).

(Choice D) Although the bill was enacted into law over the President's veto by a two-thirds vote of each house of Congress, it is unconstitutional since it interferes with the President's plenary power to issue pardons.

Educational objective:

Under the separation-of-powers doctrine, each branch of government has separate and distinct powers that generally cannot be exercised by another branch—eg, Congress and the judiciary cannot interfere with the President's plenary power to grant reprieves and pardons.

References

- U.S. Const. art. II, § 2, cl. 1 (pardon power).
- Schick v. Reed, 419 U.S. 256, 266 (1974) (stating that Congress cannot alter the President's pardon power).

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Federal checks and balances

