

A federal statute bans trade with any foreign country if the United States does not recognize the government of that country. For many years, the United States refused to recognize a particular country's government because it deemed the government repressive. The President recently extended diplomatic recognition to the country, but Congress passed a second statute withdrawing that recognition.

A US company has sued the appropriate federal agency, seeking to enjoin enforcement of the second statute. The government has moved to dismiss the action on the ground that it involves a nonjusticiable political question.

Should the court grant the motion?

- A. No, because the action concerns the validity of a federal statute. (52%)
- B. No, because the political question doctrine applies only to litigation between government entities. (1%)
- C. Yes, because the action involves sensitive issues of foreign affairs. (21%)
- D. Yes, because there is no judicially manageable standard governing diplomatic recognition. (24%)

Incorrect

Correct answer A

52% Answered correctly

01 min, 06 secs Time Spent

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## Explanation:

### Nonjusticiable political questions

(issues incapable of judicial resolution)

Recognition of foreign governments

Reception of ambassadors

Nature of wars/hostilities

Partisan gerrymandering

Guarantee of republican form of government

Recognition of Native American tribes

House/Senate rules for impeachment

Ratification process for constitutional amendments

The **political-question doctrine prohibits** federal courts from **adjudicating political questions**. A case presents a nonjusticiable political question when:

the Constitution has **reserved** decision-making on an issue to the **executive or legislative** branch *and/or*

the matter is inherently not one that the judiciary can decide—ie, there is a **lack of judicially discoverable and manageable standards** to resolve the issue.

Diplomatic recognition of a foreign government is a power reserved to the executive branch under the Constitution. Additionally, courts lack judicially discoverable and manageable standards to resolve issues concerning diplomatic recognition (**Choice D**). But in *Zivotofsky v. Clinton*, the Supreme Court held that courts have the power to determine interbranch disputes involving foreign affairs when they concern the validity of a federal statute.

Here, the company sued the federal agency to enjoin enforcement of the second statute passed by Congress. Since this action concerns the validity of a federal statute, the political-question doctrine does not apply. Therefore, the court should deny the government's motion to dismiss the action.

**(Choice B)** Whether the political-question doctrine applies depends on the *issue* involved—not the litigants' *identities*.

**(Choice C)** Courts may decide cases involving sensitive issues of foreign affairs when the issue is the validity of a statute.

### Educational objective:

The political-question doctrine bars actions that require courts to resolve issues concerning diplomatic recognition of a foreign government. However, courts have the power to

determine interbranch disputes involving foreign affairs when they concern the validity of a federal statute.

### **References**

Zivotofsky v. Clinton, 566 U.S. 189, 201 (2012) (holding that the political-question doctrine does not bar courts from determining interbranch disputes involving foreign affairs when they concern the validity of a federal statute).

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