

The Federal Drone Safety Act establishes the Federal Drone Safety Commission, authorizes the Commission to issue licenses for the sale of unmanned aerial drones on terms that are consistent with the purposes of the Act, and makes the unlicensed sale of a drone a crime. The provisions of the Federal Drone Safety Act are inseverable.

A hobby store owner applied to the Federal Drone Safety Commission for a license to sell drones. The Commission held, and the store owner participated in, a trial-type proceeding on his license application. In that proceeding it was demonstrated that the store owner had repeatedly and intentionally sold drones without a license. As a result, the Commission denied the store owner's application for a license. The license denial was based on a Commission rule authorized by the Drone Safety Act that prohibited the issuance of drone licenses to persons who had engaged in such conduct. Nevertheless, the store owner continued to sell drones in his store.

The store owner was subsequently convicted of the crime of unlicensed sale of a drone. On appeal, he challenges the constitutionality of the Federal Drone Safety Act.

What will be the most likely holding of the reviewing court?

- A. The Act is constitutional, because Congress may use the authority vested in it by the commerce clause to regulate the sale of drones and the provisions of the Act do not violate any prohibitory provision of the Constitution.
- B. The Act is constitutional, because the Constitution generally authorizes Congress to enact all laws that are necessary and proper to advance the general welfare, and Congress could reasonably believe that the sale of drones by people like the store owner constitutes a threat to the general welfare.
- C. The Act is unconstitutional, because Congress may not impose a criminal penalty on action that is improper only because it is inconsistent with an agency rule.
- D. The Act is unconstitutional, because the mere sale of a drone is a wholly local matter that is beyond the regulatory authority of Congress.

## Explanation:

The **commerce clause** gives Congress broad authority to regulate [interstate commerce](#). This power even extends to **in-state activities** that, singly or in the aggregate, **substantially affect** interstate commerce. A substantial effect is **presumed** when the activity is **economic in nature**. So, though drone sales are wholly local, it is presumed that this economic activity substantially affects interstate commerce **(Choice D)**. Therefore, Congress can regulate these sales so long as it complies with prohibitory constitutional provisions.

One such provision is Article I, section 1 and its implied **nondelegation doctrine**. This doctrine prohibits Congress from delegating purely legislative powers. But it allows Congress to **delegate** its **incidental powers** (eg, rulemaking, legislative enforcement) if it provides an **intelligible principle**—ie, a clear statement defining:

- the **policy** Congress seeks to advance (eg, drone safety)
- the **agency** to carry out that policy (eg, the Federal Drone Safety Commission) *and*
- the **scope** of that agency's authority (eg, issue licenses on terms consistent with the Act's purpose).

Since Congress properly delegated its regulatory authority to the Federal Drone Safety Commission—and there is no evidence that the Act violates any other prohibitory provision of the Constitution—the reviewing court will likely hold that the Act is constitutional.

**(Choice B)** Article I authorizes Congress to *tax and spend* for the general welfare and to enact legislation necessary and proper to exercise this [enumerated power](#). The Act here seeks to regulate drone sales—not tax or spend—for the general welfare. And since the commerce clause gives Congress direct authority to regulate this economic activity, its powers under the necessary and proper clause are unnecessary here.

**(Choice C)** The unlicensed sale of a drone is criminalized by the Act itself—not an [agency rule](#). And Congress *could* impose a criminal penalty on an action that is inconsistent with an agency rule so long as the rule was created within the scope of the agency's delegated authority.

## Educational objective:

Congress has broad authority to regulate economic activities since it is presumed that they substantially affect interstate commerce. But Congress can only delegate its incidental powers to another entity if it gives that entity an intelligible principle (**policy, agency, scope**) on which to base its regulations.

## References

- *Gonzales v. Raich*, 545 U.S. 1, 17 (2005) (holding that Congress can regulate purely local activities that are part of an economic class of activities that substantially affect interstate commerce).

- *Gundy v. United States*, 139 S. Ct. 2116, 2123 (2019) (explaining that the nondelegation doctrine allows Congress to delegate power as long as it provides an intelligible principle to guide the delegatee's use of discretion).

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