

A weed often found growing in vacant lots contains a stimulant that can be extracted by boiling the weed in water. Someone drinking the resulting "tea" can remain awake for long periods of time. However, drinking the tea can also cause paralysis and even death. Because the weed is so readily available, there is no commercial market for it. Congress has enacted a statute that makes possession of the tea a misdemeanor. The statute has no other provisions and is not part of a broader federal statutory scheme.

Is the statute constitutional?

- A. No, because Congress can regulate only commercial transactions involving drugs. (1%)
- B. No, because possession of the tea is a noncommercial activity with no link to interstate commerce. (50%)
- C. Yes, because boiling water generally involves the use of stoves and fuels that have moved in interstate commerce. (2%)
- D. Yes, because, in the aggregate, the deaths and cases of paralysis caused by the stimulant have a significant economic impact. (45%)

Incorrect

Correct answer B

50% Answered correctly

01 min, 19 secs Time Spent

2023 Version

Explanation:

Commerce power to regulate

activities that substantially affect interstate commerce

To determine if Congress can regulate, consider whether:

activity is economic in nature (then substantial effect presumed)

jurisdictional element limits reach to activities with direct connection to interstate commerce

express congressional findings that activity substantially affects interstate commerce *and* strong link between activity & effect on interstate commerce

The **commerce clause** grants Congress broad **power to regulate** interstate commerce—including **in-state activities** that, singly or in the aggregate, **substantially affect interstate commerce**. When determining if activities have a substantial effect on interstate commerce that warrants regulation by Congress, courts consider whether:

the activities are **economic (ie, commercial) in nature** (if so, a substantial effect is presumed)

the regulation has a **jurisdictional element** that limits its reach to activities with a direct connection to or effect on interstate commerce

there are **express congressional findings** concerning the activities' effect on interstate commerce *and*

there is a **strong link** between the regulated activities and the effect on interstate commerce.

Here, Congress enacted a statute that made it a misdemeanor to possess tea made from a type of weed. The statute contains no other provisions, so there is no jurisdictional element. Additionally, there are no congressional findings that address the activity's effect on interstate commerce. And since there is no commercial market for the widely available weed, possession of the tea is a noncommercial activity that has no link to interstate commerce. Therefore, the statute is unconstitutional.*

*Congress can also incidentally regulate noncommercial activities as part of a broader statutory or regulatory scheme of related commercial activities. But since the statute here is not part of any such scheme, it is not constitutional on that basis either.

(Choice A) The **commerce clause** grants Congress the power to regulate *any* activity that substantially affects interstate commerce—not just commercial transactions involving drugs.

(Choice C) Congress could have constitutionally regulated stoves and fuels that have moved in interstate commerce. But the statute regulates possession of the tea—a noncommercial activity that has no link to interstate commerce.

(Choice D) The deaths and paralysis caused by the stimulant may, in the aggregate, have a significant economic impact. However, Congress does not have the power to regulate noneconomic activities with no strong link to interstate commerce (as seen here).

Educational objective:

To determine if Congress can regulate an activity, courts consider whether (1) the activity is economic in nature, (2) the regulation contains a jurisdictional element, (3) Congress made express findings on the activity's effect on interstate commerce, and (4) there is a strong link between the activity and that effect.

References

United States v. Morrison, 529 U.S. 598, 610–12 (2000) (listing the four factors used to determine if an activity substantially affects interstate commerce).

15A Am. Jur. 2d Commerce § 24 (2022) (discussing the Morrison factors).

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