

A recently enacted federal statute requires the President to make each appointment of a United States ambassador to a foreign country from a list of three individuals. The list is to be compiled by the Senate Foreign Relations Committee and approved by the full Senate in advance of the appointment. The statute also provides that Senate confirmation of the appointment is deemed to occur automatically 30 days after the time the President names an appointee from the list, unless the full Senate determines otherwise within the 30-day period.

Is this statute constitutional?

- A. No, because the statute impermissibly restricts the plenary foreign affairs powers of the President.
- B. No, because the statute violates the constitutional requirements for appointment of ambassadors of the United States.
- C. Yes, because the statute is a necessary and proper measure in furtherance of Congress's power to regulate commerce with foreign states.
- D. Yes, because the statute is consistent with the constitutional requirement that the presidential appointment of ambassadors be with the advice and consent of the Senate.

Explanation:

The **appointments clause** grants the **President** the **power to appoint ambassadors**, Supreme Court justices, and other principal federal officers with the Senate's advice and consent. This clause gives the President plenary (ie, exclusive) nomination power that **cannot be limited by Congress**. Therefore, the statute unconstitutionally infringes upon that power by limiting the President's ability to select ambassadorial nominees to a list compiled by a Senate committee.

This statute also provides for *automatic* Senate confirmation of any individual who had been named on the list of nominees approved by the Senate before the appointment. But Senate confirmation should only occur *after* a nomination, when the Senate gives **advice** (eg, by holding hearings) and then chooses to **consent to the nomination** by **majority vote**. Therefore, this statute also violates the majority-vote requirement (**Choice D**).

(Choice A) The President does *not* have plenary power over foreign affairs since Congress also possesses powers in this area (eg, declare war, regulate foreign commerce).

(Choice C) The necessary and proper clause (article I, section 8) grants Congress the power to employ reasonably appropriate measures to carry out its other powers—eg, regulating commerce with foreign nations. But Congress cannot violate other constitutional provisions when exercising this power (as seen here).

Educational objective:

The appointments clause gives the President the power to appoint ambassadors, Supreme Court justices, and other principal federal officers with the advice and consent of the Senate. Congress cannot limit the President's plenary power to select nominees, and the Senate can only choose to consent to the nomination by majority vote.

References

- U.S. Const. art. II, § 2, cl. 2 (appointments clause).
- *Edmond v. United States*, 520 U.S. 651, 659 (1997) (stating that principal officers, including ambassadors, must be nominated by the President and confirmed by the Senate).

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Appointment clause (timeline)
(ambassadors, SCOTUS justices, principal federal officers)

President
nominates



Senate gives advice
(eg, holds hearings)



Senate consents
(majority vote required)



SCOTUS = Supreme Court of the United States