

In response to a nationwide increase in drug-related crime, Congress passed a statute creating a new agency responsible for enforcing federal drug laws. The statute authorizes the President to appoint the agency's director with the advice and consent of the Senate and prohibits the President from removing the director without the Senate's consent. The President appointed a director, and the Senate confirmed the appointment.

Recently, the President has become dissatisfied with the director's strict approach to drug-law enforcement and wishes to remove the director. Because a majority of senators favor strict drug-law enforcement, the Senate has refused to consent to the director's removal.

May the President constitutionally remove the director without the Senate's consent?

- A. No, because Congress created the director position and may properly impose conditions for the director's appointment and removal. (13%)
- B. No, because the President's removal of principal officers of the United States is subject to the advice and consent of the Senate. (8%)
- C. Yes, because congressional participation in the decision to remove a presidential appointee violates the separation of powers. (50%)
- D. Yes, because Congress cannot limit the ability of the President to remove any employee of the executive branch. (27%)

Correct

50% Answered correctly

01 min, 07 secs Time Spent

2023 Version

## Explanation:

The Constitution divides the federal government into three coequal branches that possess distinct powers (ie, [separation of powers](#)). Article I vests the legislative power in Congress, including the power to create federal agencies and individual offices within those agencies. Article II vests the executive power in the President, including the power to faithfully execute federal laws. Since it is impossible for one person to carry out this power, federal executive officers may be appointed pursuant to the appointments clause to assist the President.

Although the Constitution is silent about the removal of federal executive officers, the U.S. Supreme Court has repeatedly held that the **President has the authority to remove** such officers. Congress may limit the President's ability to remove **federal officers** in two limited circumstances (see image above), but **Congress cannot play a direct role** in the removal of federal officers—except by exercising its power of [impeachment](#) (**Choice D**).

Here, Congress created a federal agency headed by a director appointed by the President and confirmed by the Senate. Since congressional participation in the decision to remove a presidential appointee violates the separation of powers, the President may constitutionally remove the director without the Senate's consent.

**(Choices A & B)** Although Congress created the director position, Congress cannot impose conditions for the director's appointment and removal. That is because (1) the director is a principal federal officer who must be appointed by the President with the advice and consent of the Senate and (2) congressional participation in the removal of federal officers other than by impeachment (not seen here) violates the separation of powers.

## Educational objective:

The President has the authority to remove federal executive officers, aside from two limited exceptions in which Congress may restrict this power. However, Congress cannot play a direct role in the removal of federal officers—except by exercising its power of impeachment—as this would violate the separation of powers.

## References

Myers v. United States, 272 U.S. 52, 161 (1925) (holding that a law requiring the Senate's advice and consent to remove a federal officer violates the separation of powers).

Bowsher v. Synar, 478 U.S. 714, 726 (1986) (explaining that Congress cannot reserve to itself the power to remove a federal officer except for its power of impeachment).

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## Appointment and removal of executive officers

