

A state university adopted a new regulation prohibiting certain kinds of speech on campus. Students, staff, and faculty convicted by campus tribunals of violating the regulation were subject to penalties that included fines, suspensions, expulsions, and termination of employment. The regulation was widely unpopular, and there was a great deal of public anger directed toward the two tenured professors who had drafted and promoted it.

The following year, the state legislature approved a severable provision in the appropriations bill for the university declaring that none of the university's funding could be used to pay the two professors, who were specifically named in the provision. In the past, the professors' salaries had always been paid from funds appropriated to the university by the legislature, and the university had no other funds that could be used to pay them.

If the professors challenge the constitutionality of the appropriations provision, is the court likely to uphold the provision?

- A. No, because it amounts to the imposition by the legislature of a punishment without trial.
- B. No, because it is based on conduct the professors engaged in before it was enacted.
- C. Yes, because the Eleventh Amendment gives the state legislature plenary power to appropriate state funds in the manner that it deems most conducive to the welfare of its people.
- D. Yes, because the full faith and credit clause requires the court to enforce the provision strictly according to its terms.

Explanation:

Prohibited legislation

Bill of attainder clauses Prohibit legislative acts that inflict *civil or criminal* punishment against identified persons (or groups of persons) without a trial

Ex post facto clauses Prohibit enactment of retroactive *criminal* laws that:

- criminalize previously legal conduct
- impose greater punishment than previously prescribed
- eliminate previously available defenses
- decrease prosecution's previous burden of proof

Article I of the Constitution **prohibits bills of attainder**—ie, **legislative acts** that inflict **punishment** (criminal or civil) on **specified individuals** or groups of individuals **without a judicial trial**. Here, the appropriations provision forbids the state university from paying two *named* professors. And since withholding the specified professors' salaries constitutes a civil punishment and no trial is afforded, the provision is an unconstitutional bill of attainder that the court will likely invalidate.

(Choice B) The Article I ex post facto clauses prohibit laws that impose retroactive *criminal* punishments. Here, the state provision punishes the professors for conduct that occurred before the provision was adopted. But since withholding the professors' pay constitutes a *civil* punishment, the provision will not be struck down on this basis.

(Choice C) The [Eleventh Amendment](#) bars private parties (and foreign governments) from suing a state in federal court without the state's express consent. And though the Tenth Amendment gives states the power to establish laws for the welfare, health, and safety of their people, that power is not plenary (ie, absolute).

(Choice D) The Article IV full faith and credit clause requires courts to recognize the valid judgments, legislative acts, and records of *other* states. But since the court is considering its *own* state law, this clause does not apply. Even if it did, a court is never required to enforce an unconstitutional law.

Educational objective:

Article I of the Constitution prohibits bills of attainder—ie, legislative acts that inflict punishment (civil or criminal) on specified individuals without a trial.

References

- United States v. Lovett, 328 U.S. 303, 315–16 (1946) (holding that a legislative act that withheld the salaries of named government employees without a trial constituted a prohibited bill of attainder).

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