

A statute passed by both houses of Congress and signed by the President authorizes a federal agency to select a site for and to construct a monument honoring members of the capitol police force killed in the line of duty. The statute appropriates the necessary funds but provides that the funds may not be expended until both houses of Congress have adopted a concurrent resolution, not subject to presentment to the President, approving the agency's plans for the monument's location and design.

Is the provision requiring further congressional approval before expenditure of the funds constitutional?

- A. No, because decisions regarding the placement and design of government-owned structures are an exclusively executive function with which Congress may not interfere by any means.
- B. No, because the provision amounts to an unconstitutional legislative interference with an executive function.
- C. Yes, because Congress may attach reasonable conditions to its appropriation of funds to executive departments, and its special interest in the members of its own police force makes the provision a reasonable condition.
- D. Yes, because the provision is part of a statute that was passed by both houses of Congress and signed by the President.

Explanation:

Article I entrusts **Congress** (ie, the House of Representatives and the Senate) with the power to take legislative action. Action is legislative when its purpose or effect is to alter the legal rights or duties of persons outside of Congress. And **legislative action**, absent narrow **exceptions**, must be:

- approved by both houses of Congress (ie, **bicameralism**) *and*
- presented to the President for approval or disapproval (ie, **presentment**).

Through this process, Congress can **delegate some of its powers** (eg, rulemaking) to federal executive agencies. But once Congress does so, it **cannot interfere** with the agencies' functions unless it again complies with the legislative-action process. Any attempt to bypass this process amounts to an **unconstitutional legislative veto**.

Here, Congress delegated power to the federal agency to select a site for and construct a monument. But a statutory provision prevents the agency from expending the appropriated funds until Congress adopts a concurrent resolution approving the agency's plans. And since the resolution will not be presented to the President, the provision amounts to an unconstitutional legislative interference with an executive function (ie, legislative veto).

(Choice A) Decisions regarding the placement and design of government structures are *not* an **exclusively executive function** because Congress also has the authority to make these determinations.

(Choice C) Congress may attach reasonable conditions to its **appropriations of funds**—eg, directing how executive departments can spend funds. But such conditions must comply with the Constitution (not seen here).

(Choice D) The provision is part of a statute that passed both houses of Congress and was signed by the President. However, the provision amounts to an unconstitutional legislative veto since it grants Congress the future power to approve or disapprove the agency's plans without presentment to the President.

Educational objective:

Once Congress delegates power to an executive agency, it cannot interfere with the agency's functions without satisfying the legislative-action process—ie, bicameralism and presentment. Any attempt to bypass this process is an unconstitutional legislative veto.

References

- U.S. Const. art. I, § 7, cl. 2 (bicameralism and presentment requirements).
- *INS v. Chadha*, 462 U.S. 919, 951–52 (1983) (explaining that almost all legislative acts must satisfy the constitutional requirements of bicameralism and presentment to have effect).

**Federal legislative process
(requirements for legislative action)**

