

Because of a sudden and unanticipated severe shortage of heating fuel, the President has ordered all offices of federal executive agencies to be open only four days per week. The President's order allows an exception to the extent that emergency circumstances require different hours of operation (as in the case of federal hospitals).

When Congress enacted the appropriations statute for operating all federal executive agencies, its members assumed that the offices of those agencies would be open five days per week, but Congress did not include such a requirement in its appropriations statute or in any other statute.

Is the President's order constitutional?

- A. No, because the heads of the various executive agencies have final responsibility for the operation of those agencies' offices.
- B. No, because when they passed the statute appropriating monies for the operation of executive agencies, members of Congress assumed that those agencies' offices would be open five days per week.
- C. Yes, because the Constitution vests the President with plenary authority to direct the administration of all federal agencies in any manner the President deems expedient.
- D. Yes, because the order relates to the management of the executive branch and is not prohibited by any statute.

Explanation:

Article II gives the **President** a wide range of **powers**, which includes the power to manage federal executive agency operations by issuing executive orders. But **Congress can limit** those powers when these two branches **share authority** over a particular area (eg, executive agencies). When this occurs, the **Youngstown framework** is used to determine the **extent of the President's authority** to act by considering whether there was **congressional**:

- **authorization** – in which case the President had **maximum authority** to act and that act is **likely valid**
- **silence** – in which case the act is **valid so long as** it (1) fell within the President's **Article II powers** and (2) did **not interfere** with another branch's powers *or*
- **opposition** – in which case the President had **minimal authority** to act and that act is **likely invalid**.

Here, the President ordered all federal executive agency offices to be open only four days per week. Although Congress had assumed that agency offices would be open five days per week, it remained *silent* by not including such a requirement in any statute (**Choice B**). And since the order falls within the President's Article II power to manage executive agencies and does not interfere with another branch's powers, the order is constitutional.

(Choice A) The heads of executive agencies have final responsibility for the operation of those agencies' offices. But this does not affect the constitutionality of the President's order since agency heads must comply with operational requirements validly imposed by Congress or the President when fulfilling that responsibility.

(Choice C) The President does *not* have plenary (ie, absolute) authority to direct the administration of federal agencies in any manner the President deems expedient. Instead, the President must comply with the Constitution and relevant federal statutes.

Educational objective:

When Congress has remained silent about the President's actions, those actions are valid so long as they (1) fall within the President's Article II powers and (2) do not interfere with another branch's powers.

References

- *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635–38 (1952) (Jackson, J., concurring) (setting forth the tripartite framework for analyzing the constitutionality of presidential actions).

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**Youngstown framework
(congressional limits on presidential authority)**

