

Congress enacted a federal statute that awards funds to nongovernmental organizations in the United States and around the world to combat the spread of a deadly airborne virus. The statute requires that the funds be used strictly for research and testing related to the virus. The last section of the statute conditions the award of the funds on the recipient's agreement to publicly announce its support for free-trade policies.

A U.S. nongovernmental organization that is headquartered abroad qualifies for funding under the federal statute. The organization does not want to publicly support free-trade policies because it believes that such support will alienate certain foreign governments with which the organization works. As a result, the organization has filed suit in federal court, seeking a declaratory judgment that the statute's condition requiring the announcement of support for free-trade policies compels speech and is therefore unconstitutional as applied to it.

How should the court rule?

- A. Declare that the condition is constitutional, because Congress may compel speech by imposing conditions on the receipt of federal funds.
- B. Declare that the condition is constitutional, because the organization is headquartered abroad and therefore lacks constitutional protections.
- C. Declare that the condition is unconstitutional, because Congress cannot impose conditions on the receipt of federal funds.
- D. Declare that the condition is unconstitutional, because the condition infringes upon the organization's First Amendment right to free expression.

Explanation:

Conditions on government funding

Funded activities	Government can restrict use of funds to authorized purposes	"Grant monies must be used for the acquisition, construction, and maintenance of appropriate performance facilities"
Funding recipients	Government cannot restrict protected conduct unrelated to funding's purpose	"Recipient must agree to refrain from all kinds of political lobbying calculated to secure additional tax support for the performing arts"

The taxing and spending clause gives Congress broad power to spend federal revenue for the general welfare. Congress may place conditions on the receipt of federal funds so long as those conditions comply with the U.S. Constitution—including the First Amendment right to free expression (**Choice C**). The success of a First Amendment challenge to a **conditional spending provision** depends on whether the condition is placed on:

- **funded activities** – in which case the **government *can* insist** that the funds be used for authorized purposes (eg, requiring that funds be used only for research and testing) *or*
- **funding recipients** – in which case the **government *cannot* restrict** the recipient's right to engage in constitutionally protected conduct that falls **outside the funding's purpose or scope (Choice A)**.

Here, the federal statute places a condition on funding *recipients* by requiring them to publicly support a policy promoting free trade. This falls outside of the funding's purpose and scope to combat the virus and infringes upon the U.S. organization's First Amendment right to free expression. Therefore, this requirement is unconstitutional **as applied** to the organization.

(Choice B) A constitutional challenge can be raised by a U.S. citizen located anywhere in the world or a foreign citizen located within U.S. territories—no one else possesses rights under the Constitution. Therefore, this U.S. organization headquartered abroad *is* protected by the Constitution.

Educational objective:

Congress can insist that federal funds be used for an authorized purpose, but it cannot restrict a funding recipient's right to engage in constitutionally protected conduct that is unrelated to the funding's purpose or scope.

References

- Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc., 570 U.S. 205, 221 (2013)
(holding that a federal funding program violated the First Amendment by conditioning funds on requirements unrelated to the program's purpose).
- Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc., 140 S. Ct. 2082, 2086 (2020)
("Foreign citizens outside U.S. territory do not possess rights under the U.S. Constitution").

Copyright © UWorld. All rights reserved.