

A man mailed thousands of letters to individuals residing in his state that falsely claimed that the individuals were delinquent on their state tax payments. The letters further stated that the individuals needed to send a set amount of money to the listed address in order to avoid criminal prosecution. One of the individuals who received this letter contacted a federal agency. After investigating, the federal government charged the man with violating a federal statute that prohibits mailing misleading or false materials to obtain money.

At trial, the man argues that Congress had no authority to enact the federal statute and that the statute is a violation of his free speech rights protected by the First Amendment.

Is the court likely to find the statute constitutional?

- A. No, because although Congress may regulate mail sent interstate, it lacks the power to regulate mail sent intrastate.
- B. No, because the statute violates the man's First Amendment rights.
- C. Yes, because Congress has the power to provide for the general welfare, and the statute directly advances and is narrowly tailored to achieve a substantial government interest.
- D. Yes, because Congress has the power to regulate the mail, and the letters are not constitutionally protected speech.

## Explanation:

The necessary and proper clause allows Congress to take actions that are reasonably necessary to carry out its enumerated [Article I powers](#). As a result, **Congress may** regulate and restrict what is sent through the mail to carry out its enumerated power to **establish post offices and post roads** (as seen here). However, Congress must **comply with other constitutional provisions** when exercising this power, including the First Amendment **free speech clause**.

Under the free speech clause, Congress may **freely regulate and restrict** materials containing (1) [unprotected speech](#) or (2) **commercial speech** that is **false or misleading** or concerns unlawful activity. Here, the man's letters are false commercial speech because they falsely claimed that the individuals were delinquent on their state tax payments and needed to pay money to avoid criminal prosecution. As a result, the letters are not protected by the First Amendment, and the court will likely find the statute constitutional **(Choice B)**.

**(Choice A)** Congress has the power to regulate mail sent interstate (ie, between two or more states) as well as mail sent intrastate (ie, within a state).

**(Choice C)** Congress has the power to spend for the general welfare, but this power does not apply here since the federal statute is not a spending measure. Additionally, the statute need not directly advance or be narrowly tailored to achieve a substantial government interest. This intermediate level of First Amendment scrutiny only applies to commercial speech that is true, is not misleading, and concerns a lawful activity (not seen here).

## Educational objective:

Congress has broad power to establish post offices and post roads, including regulating and restricting what may be sent by mail. When exercising this power, Congress does not violate the First Amendment free speech clause by restricting unprotected speech OR commercial speech that is false or misleading or concerns unlawful activity.

## References

- U.S. Const. art. I, § 8, cl. 7 (power to establish post offices).
- U.S. Postal Serv. v. Council of Greenburgh Civic Ass'ns, 453 U.S. 114, 126 (1981) (explaining that Congress cannot exercise its postal power in a manner that violates the First Amendment).
- Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n, 447 U.S. 557, 566 (1980) (stating that false and misleading commercial speech is not protected by the First Amendment).

## Regulation of commercial speech

