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Separation of Powers

1. In this suit, the court should hold the congressional veto of the license of the energy company to be

Early last year, the Commission found that a particular energy company met all statutory requirements and, therefore, voted to issue the energy company a license authorizing it to construct a nuclear energy plant. Because they believed that the issuance of a license to the energy company was not in accord with the applicable statutory criteria, a majority of each of the two houses of Congress voted, within the specified 30-day period, to veto the license. On the basis of that veto, the Commission refused to issue the license. Subsequently, the energy company sued the Commission in an appropriate federal district court, challenging the constitutionality of the Commission's refusal to issue the license. A federal statute prohibits the construction of nuclear energy plants without a license from the Federal Nuclear Plant Siting Commission. The statute provides that the Commission may issue a license authorizing the construction of a proposed nuclear energy plant 30 days after the Commission makes a finding that the plant will comply with specified standards of safety, technological and commercial feasibility, and public convenience. In a severable provision, the Commission's enabling statute also provides that the Congress, by simple majorities in each house, may veto the issuance of a particular license by the Commission if such a veto occurs within 30 days following the required Commission finding.

- Invalid, because any determination by Congress that particular agency action does not satisfy statutory criteria violates Article III, Section 1 of the Constitution because it constitutes the performance of a judicial function by the legislative branch
- **Invalid, because Article I, Section 7 of the Constitution has been interpreted to mean that any action of Congress purporting to alter the legal rights of persons outside of the legislative branch must be presented to the President for his signature or veto**
- Valid, because Congress has authority under the commerce clause to regulate the construction of nuclear energy plants
- Valid, because there is a compelling national interest in the close congressional supervision of nuclear plant siting in light of the grave dangers to the public health and safety that are associated with the operation of such plants

Note:

Under Article I, Congress may invoke its lawmaking powers to establish federal agencies, offices within those agencies, agency structures, and operations. It may also require, subject to constitutional limitations, the appointment and removal of officeholders within the agencies. Furthermore, Congress may determine which powers, duties, and functions the agencies may exercise, in addition to directly opposing, through implementing legislation, certain actions by agencies acting pursuant to their authority. See *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935).

Legislation is typically required for Congress to monitor federal agencies, including when it seeks to control structures, funding, and regulations. This legislative action must abide by bicameral constitutional requirements, meaning, it must be: (i) approved by both houses of Congress; and (ii) presented to the President for either signature or veto. U.S. Const. art. I, §§1 and 7.

The legislative veto is a device that enables Congress to monitor actions by the executive branch, including federal administrative agencies. A one-house legislative veto is unconstitutional because it violates both the President's veto power and the bicameral structure of Congress. *Immigration and Naturalization Serv. (INS) v. Chadha*, 462 U.S. 919 (1983). Under *Chadha*, the one-house legislative veto is completely unusable. If the House or Senate wants to reserve power to undo the action of an administrative agency, both houses have to pass the same bill and present it to the President for a possible veto. A two-house legislative veto, in the vast majority of instances, is just as unconstitutional as single-house veto provision, because both deprive the President of the opportunity to exercise his veto power.

B is correct. When Congress seeks to exercise legislative veto power in furtherance of controlling federal agencies, such an action must abide by Article I, Sections 1 and 7, requiring a bicameral majority vote and presentation to the President for signature or veto. Most instances of two-house vetoes have been held unconstitutional because they deprive the President of the opportunity to exercise his veto power. In this case, because the legislative veto was never presented to the President, and this type of congressional action requires this step, the veto was invalid.

A is incorrect. This answer reaches the correct answer with the wrong reasoning. Although it is true that Article III of the Constitution empowers the judicial branch, Congress has its own power to take legislative measures around the monitoring of federal agencies, including the issuance of licenses. This does not amount to judicial action, but rather, legislative action to monitor federal agencies. However, as stated above, the veto is still invalid because it was never presented to the President for signature.

C is incorrect. It is true that Congress has the authority, pursuant to the Commerce Clause, to regulate the construction of nuclear energy plants. However, this broad congressional authority is still subject to other constitutional requirements. One such requirement is that a legislative action of this nature receive bicameral approval and be presented to the President, which did not occur in this case.

D is incorrect. Congress may have a compelling interest in regulating the establishment of nuclear plants for public health and safety reasons, but its actions were invalid because it cannot act alone without presidential sign-off. Additionally, Congress would not have needed a compelling state interest to regulate nuclear siting, because the facts present no deprivation of a fundamental right or classification based on a protected class.

2. The constitutionality of this federal statute may most easily be justified on the basis of the power of Congress to

A federal statute prohibits the sale or resale, in any place in this country, of any product intended for human consumption or ingestion into the human body that contains designated chemicals known to cause cancer, unless the product is clearly labeled as dangerous.

• Regulate commerce among the states

- Enforce the Fourteenth Amendment
- Provide for the general welfare
- Promote science and the useful arts

Note:

A is correct. The power granted to Congress to regulate commerce has been interpreted so broadly that it encompasses almost any economic act that could conceivably have some kind of impact, even secondarily, on the stream of commerce. Because this statute prohibits the sale or resale of certain products without certain safeguards, it clearly falls under this broad power.

B is incorrect. The statute seeks to regulate both private and public action, and generally the Fourteenth Amendment only applies to state action.

C is incorrect. While Congress can spend for the general welfare, Congress may not directly regulate for the general welfare.

D is incorrect. Although Congress is granted the power to promote science and the useful arts, the method by which the Constitution requires that Congress exercise that power is by awarding patents and copyrights, not by regulating the sale of products.

3. If the county board restores the courthouse with the aid of a federal restoration and preservation grant, is the board bound to install ramps and other facilities for handicapped people in that building?

The county courthouse in the state was built in 1895 and is still in use. It does not contain ramps or other special facilities for handicapped people. The State Board of Architects has determined that the installation of those facilities would destroy the architectural integrity of the building. The county board applies for a federal grant to restore and preserve that county's courthouse. A law of a particular state requires public buildings in the state to have ramps and other facilities for handicapped people. It exempts from those requirements any building that is more than 70 years old if the State Board of Architects finds that the installation of such facilities would destroy the architectural integrity of the building. Congress enacted a statute providing grants of federal funds for the restoration and preservation of courthouses that were built before 1900 and are still in use. The statute contains an inseverable condition requiring that any courthouse restored with the aid of such a grant must be equipped with ramps and other facilities necessary to accommodate physically handicapped people.

• Yes, because Congress may impose reasonable conditions related to the public welfare on grants of federal funds to public bodies when the public bodies are free to accept or reject the grants

- Yes, because the rights of handicapped and disabled people are fundamental rights that take precedence, as a constitutional matter, over considerations of architectural integrity
- No, because the Constitution does not authorize the federal government to direct the actions of the states or any of their political subdivisions with respect to matters affecting their own governmental buildings
- No, because any acceptance of this condition by the county board of supervisors would, as a matter of law, be considered to be under duress

Note:

A is correct. Congress can condition the grant of federal funds to public bodies on compliance with measures related to the public welfare as long as the public body is free to accept or reject the grants.

B is incorrect. This answer choice does not answer the call of the question.

C is incorrect. There are many ways in which the Constitution would empower Congress to regulate actions concerning state buildings under the Commerce Clause power.

D is incorrect. As long as the public body is free to reject the federal funds, the public body is not under duress.

4. Which of the following sources of constitutional authority can most easily be used to justify the authority of Congress to enact this statute?

"Look-alike drugs" is the term used to describe nonprescription drugs that look like narcotic drugs and are sold on the streets as narcotic drugs. After extensive hearings, Congress concluded that the sale of look-alike drugs was widespread in this country and was creating severe health and law enforcement problems. To combat these problems, Congress enacted a comprehensive statute that regulates the manufacture, distribution, and sale of all nonprescription drugs in the United States.

- The spending power
- **The Commerce Clause**
- The General Welfare Clause
- The enforcement powers of the Fourteenth Amendment

Note:

B is correct. The power granted to Congress to regulate commerce has been interpreted so broadly that it encompasses almost any economic act that could conceivably have some kind of impact, even secondarily, on the stream of commerce. Because the sale of these drugs was widespread throughout the country, and the statute targeted the sale, manufacturing, and distribution of the drugs, it is properly authorized by the Commerce Clause.

A is incorrect. This is not an action linked with federal spending. These products are not regulated as a condition of receipt of federal funds.

C is incorrect. The General Welfare Clause is not an independent source of authority.

D is incorrect. The statute seeks to regulate private and public action, and the Fourteenth Amendment applies only to the state action.

5. Which of the following acts by the United States Senate would be constitutionally IMPROPER?

- The Senate decides, with the House of Representatives, that a disputed state ratification of a proposed constitutional amendment is valid
- The Senate determines the eligibility of a person to serve as a senator
- **The Senate appoints a commission to adjudicate finally a boundary dispute between two states**
- The Senate passes a resolution calling on the President to pursue a certain foreign policy

Note:

Article I, Section 5, Clause 1 of the Constitution provides the exclusive qualifications to be a member of Congress, and neither a state nor Congress itself may add to or change such qualifications to federal office, absent a constitutional amendment. However, the Constitution expressly delegates to each house of Congress the authority to be the final judge of the qualifications of its own members.

*The Constitution grants Congress a number of specific powers, many of which are enumerated in Article I, Section 8. However, the constitutional authorization for Congress to act does not have to be explicit; it can also be implied. Congress has auxiliary power under the Necessary and Proper Clause, which gives Congress the power to make all laws necessary and proper (i.e., appropriate) for carrying into execution any power granted to any branch of the federal government. Congress may not, however, adopt a law that is expressly prohibited by another provision of the Constitution. Congress's invocation of its powers under the Necessary and Proper Clause also must be rationally related to objectives stemming from its enumerated constitutional powers. See *McCulloch v. Maryland*, 17 U.S. 316 (1819). Although nothing in the Constitution explicitly gives the federal government the power to regulate foreign affairs (though Article I, Section 8 gives Congress the right to "regulate Commerce with foreign Nations"), the federal government's right to conduct foreign affairs is generally considered to be implied.*

Article III, Section 2 states: "The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states; between a state and citizens of another state; between citizens of different states; between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects." (emphasis added)

Article V gives Congress the power to propose, by a two-thirds vote, a constitutional amendment for ratification by three-fourths of the states. When Congress sends a proposed amendment to the states for ratification, it will typically dictate a time frame in which the ratification process must be completed.

C is correct. Under Article III of the U.S. Constitution, the U.S. Supreme Court is explicitly given the authority to resolve controversies between two states. Neither Congress nor the Senate alone is given that power. Therefore, it would be improper for the Senate to appoint a commission to adjudicate a boundary dispute between two states.

A is incorrect. This is a proper action under Article V, which gives Congress the power to propose, by a two-thirds vote, a constitutional amendment for ratification by three-fourths of the states. Typically Congress has certain powers regarding the ratification process, which includes, for example, the imposition of time limits within which the states must complete ratification of the proposed amendment. Therefore, it is constitutional for the Senate to decide, with the House of Representatives, that a disputed state ratification of a proposed constitutional amendment is valid.

B is incorrect. This is a proper action under Article I, Section 5, Clause 1, which gives each congressional house, including the Senate, the authority to make final determinations regarding the qualification requirements of its members. As such, the Senate may properly determine the eligibility of a person to serve as a senator.

*D is incorrect. This is a proper action under Article I, which gives Congress the power to enact any laws that are necessary and proper for carrying into execution powers by any branch of government, as long as two requirements are met: (i) the enacted law is not otherwise prohibited under the Constitution; and (ii) the legislation is rationally related to objective(s) that stem from its enumerated powers. See *McCulloch v. Maryland*, 17 U.S. 316 (1819). Under Congress's enumerated powers, some are considered implied, such as the federal government's right to conduct foreign affairs. Therefore, Congress's passage of a resolution calling on the President to pursue a certain foreign policy is permissible.*

6. As applied to the issuance in the United States of an airline ticket for travel between two cities that will not be served by any of the new airports, this tax is

In order to provide funds for a system of new major airports near the ten largest cities in the United States, Congress levies a tax of \$25 on each airline ticket issued in the United States. The tax applies to every airline ticket, even those for travel that does not originate in, terminate at, or pass through any of those ten large cities.

- **Constitutional, because Congress has broad discretion in choosing the subjects of its taxation and may impose taxes on subjects that have no relation to the purpose for which those tax funds will be expended**
- Constitutional, because an exemption for the issuance of tickets for travel between cities that will not be served by the new airports would deny the purchasers of all other tickets the equal protection of the laws
- Unconstitutional, because the burden of the tax outweighs its benefits for passengers whose travel does not originate in, terminate at, or pass through any of the ten largest cities
- Unconstitutional, because the tax adversely affects the fundamental right to travel

Note:

A is correct. Congress's powers to tax and to spend funds are both very broad, and there is no requirement that what is spent be related in any way to what is taxed.

B is incorrect. An exemption for travelers between other cities would not deny any purchasers equal protection of the law, since such an exemption would be rationally related to the legitimate governmental purpose of funding the busier airports.

C is incorrect. The test is not whether the burden outweighs the benefits for the travelers. In fact, the burdens and benefits are only relevant if they make the taxing irrational.

D is incorrect. The tax does not infringe on the right to travel, since it applies equally to all travel, is a small part of the total cost of plane fare, and there are many other easy ways to travel between the same destinations.

7. This act of Congress is

Congress passed a bill prohibiting the President from granting a pardon to any person who had not served at least one-third of the sentence imposed by the court which convicted that person. The President vetoed the bill, claiming that it was unconstitutional. Nevertheless, Congress passed it over his veto by a two-thirds vote of each house.

- Constitutional, because it was enacted over the President's veto by a two-thirds vote of each house
- Constitutional, because it is a necessary and proper means of carrying out the powers of Congress
- **Unconstitutional, because it interferes with the plenary power of the President to grant pardons**
- Unconstitutional, because a Presidential veto based upon constitutional grounds may be overridden only with the concurrence of three-fourths of the state legislatures

Note:

C is correct. Article II, Section 2, Clause 1 states that the President shall have the power to grant pardons except in cases of impeachment. That power is not qualified in any way, and for Congress to attempt to qualify the power is unconstitutional.

A is incorrect. Although Congress may usually enact laws that the President has vetoed by a two-thirds majority vote, Congress may not take power away from the President that the Constitution grants.

B is incorrect. The power to grant pardons is not a congressional power; rather, it is solely an executive power.

D is incorrect. There is no such rule for vetoes on unconstitutional grounds. The Constitution can be amended when a proposed amendment, passed by two-thirds of both houses of Congress, is ratified by three-fourths of the states, but that was not the scenario in this problem.

8. This federal tax is probably

The Sports Championship Revenue Enhancement Act is a federal statute that was enacted as part of a comprehensive program to eliminate the federal budget deficit. That act imposed, for a period of five years, a 50% excise tax on the price of tickets to championship sporting events. Such events included the World Series, the Super Bowl, major college bowl games, and similar championship sports events.

- Constitutional, because the compelling national interest in reducing the federal budget deficit justifies this tax as a temporary emergency measure
- **Constitutional, because an act of Congress that appears to be a revenue raising measure on its face is not rendered invalid because it may have adverse economic consequences for the activity taxed**
- Unconstitutional, because a 50% tax is likely to reduce attendance at championship sporting events and, therefore, is not rationally related to the legitimate interest of Congress in eliminating the budget deficit
- Unconstitutional, because Congress violates the equal protection component of the Fifth Amendment by singling out championship sporting events for this tax while failing to tax other major sporting events to which tickets are sold

Note:

Under Article I, Section 8, Congress does have the right to "lay and collect taxes . . . to pay the debts and provide for the . . . general welfare of the United States . . ." Congress may spend for the general welfare, it may tax for the general welfare, although it may not regulate for the general welfare. See U.S. v. Butler, 297 U.S. 1 (1936). This Article also grants Congress auxiliary power under the Necessary and Proper Clause, which gives Congress the power to make all laws necessary and proper (i.e., appropriate) for carrying into execution any power granted to any branch of the federal government. So long as the means is rationally related to a constitutionally-specified object, the means is also constitutional.

Congress has the power to lay and collect taxes, imposts, and excises, but they must be uniform throughout the United States. The requirement of uniformity in the levy of indirect taxes (which generally means any kind of "privilege" tax, including duties and excises) has been interpreted by the Court to mean geographical uniformity only - i.e., identical taxation of the Taxed Article in every state where it is found. Fernandez v. Wiener, 326 U.S. 340 (1945).

MBE Tip: Absent a specific restriction, be very hesitant to rule against a tax measure on the MBE. A tax measure will be upheld if it bears some reasonable relationship to revenue production or if Congress has the power to regulate the taxed activity.

B is correct. The federal tax is probably constitutional because Congress has broad power to tax for the general welfare, as long as the measure bears any reasonable relationship to revenue production. The tax measure here satisfies that standard, as it is intended to eliminate the federal budget deficit. Although the 50% excise tax may have adverse economic consequences, it is uniform and revenue-based, and thus falls within the federal power to tax.

A is incorrect. This answer reaches the correct answer with the wrong reasoning. The federal tax is probably constitutional, but not because it passes strict scrutiny, a standard of review not applicable to taxation measures. The "compelling national interest" in reducing the federal budget deficit is not required, as that would be a higher bar than necessary. The tax need only be uniform and bear some reasonable relationship to revenue production.

C is incorrect. Even though a 50% tax may be likely to reduce attendance at championship sporting events, this does not negate the rational relationship between the tax and the interest in eliminating the budget deficit. The rational relationship exists because taxing in this context is related to revenue production, despite the adverse consequences, such as reduced attendance.

D is incorrect. A congressional tax measure is only required to be reasonably related to revenue efforts, as explained above. The fact that sporting events are singled out is irrelevant because there is no right to equal protection for "sporting events," only people.

9. In this case, the reviewing court would probably hold that act to be

A user applied to the Federal Computer Abuse Commission for a license to possess a computer. The Commission held, and the user participated in, a trial-type proceeding on the user's license application. In that proceeding it was demonstrated that the user repeatedly and intentionally used computers to introduce secret destructive computer programs (computer viruses) into electronic data banks without the consent of their owners. As a result, the Commission denied the user's application for a license. The license denial was based on a Commission rule authorized by the Computer Abuse Act that prohibited the issuance of computer licenses to persons who had engaged in such conduct. Nevertheless, the user retained and continued to use his computer. He was subsequently convicted of the crime of unlicensed possession of a computer. On appeal, he challenges the constitutionality of the licensing provision of the Federal Computer Abuse Act. The Federal Computer Abuse Act establishes the Federal Computer Abuse Commission, authorizes the Commission to issue licenses for the possession of computers on terms that are consistent with the purposes of the act, and makes the unlicensed possession of a computer a crime. The provisions of the Federal Computer Abuse Act are inseverable.

- Constitutional, because the Constitution generally authorizes Congress to enact all laws that are necessary and proper to advance the general welfare, and Congress could reasonably believe that possession of computers by people like the user constitutes a threat to the general welfare
- **Constitutional, because Congress may use the authority vested in it by the commerce clause to regulate the possession of computers and the provisions of this act do not violate any prohibitory provision of the Constitution**
- Unconstitutional, because Congress may not impose a criminal penalty on action that is improper merely because it is inconsistent with an agency rule
- Unconstitutional, because the mere possession of a computer is a wholly local matter that is beyond the regulatory authority of Congress

Note:

The U.S. Constitution grants Congress a number of specific powers, many of which are enumerated in Article I, Section 8. It also grants Congress auxiliary power under the Necessary and Proper Clause. This Clause gives Congress the power to make all laws necessary and proper (i.e., appropriate) for carrying into execution any power granted to any branch of the federal government. Congress may not, however, adopt a law that is expressly prohibited by another provision of the Constitution.

Article I, Section 8, Clause 3 empowers Congress to "regulate commerce with foreign nations and among the several states, and with the Indian tribes." Commerce is defined as "every species of commercial intercourse . . . which concerns more states than one," including virtually every form of activity involving or affecting two or more states. *Gibbons v. Ogden*, 22 U.S. 1 (1824).

The Supreme Court has made it clear that the power of Congress to regulate commerce, although very broad, does have limits so as to not obliterate the distinction between what is national and what is local. To be within Congress's power under the Commerce Clause, a federal law must regulate under one of four categories: (i) channels of interstate commerce; (ii) instrumentalities of interstate commerce and persons and things in interstate commerce; (iii) articles moving in interstate commerce; or (iv) activities that have a substantial effect on interstate commerce.

Under Article I, Section 8, Congress does have the right to "lay and collect taxes . . . to pay the debts and provide for the . . . general welfare of the United States . . ." But the phrase "provide for the . . . general welfare" in this sentence modifies "lay and collect taxes . . . to pay the debts . . ." Therefore, Congress may spend for the general welfare, it may tax for the general welfare, but it may not regulate for the general welfare. See *United States v. Butler*, 297 U.S. 1 (1936). For this reason, a congressional regulatory scheme has to be justified as a reasonable means of carrying out some other enumerated power, typically the commerce power.

The legislature may delegate its authority to enact regulations, the violation of which are crimes, but prosecution for such violations must be left to the executive and judicial branches. See *United States v. Grimaud*, 220 U.S. 506 (1911). Therefore, statutes may criminalize conduct that is subsequently prosecuted by the executive agencies that have been delegated legislative power.

B is correct. One of Congress's most important powers is its authority to regulate commerce among the states. There are four categories of activities that Congress has the power to regulate under the Commerce Clause: (i) channels of interstate commerce; (ii) instrumentalities of interstate commerce; (iii) articles moving in interstate commerce; or (iv) activities having a substantial effect on interstate commerce. Therefore, Congress has broad power under the Constitution to regulate items in the stream of commerce, including the possession of computers. Because this licensing provision doesn't violate any other constitutional prohibition, it is constitutional.

A is incorrect. This answer reaches the correct answer with the wrong reasoning. Article I, Section 8 does grant Congress the power to make all laws necessary and proper to appropriately carry out the duties of the branches of government. It also gives Congress the power to tax and spend, which is subject to the requirement that such actions serve the general welfare. However, there is no independent congressional power to regulate for the general welfare.

C is incorrect. Congress may pass legislation that criminalizes certain actions, the prosecution of which may be delegated to agencies under the executive or judicial branches. See *United States v. Grimaud*, 220 U.S. 506 (1911). In this case, the statute itself is what establishes criminal liability for the unlicensed possession of computers, not the agency regulations.

D is incorrect. This is a misstatement of the law. The Commerce Clause gives Congress broad power to regulate articles that move in interstate commerce. Commercial products, such as computers, virtually always impact interstate commerce in some way, triggering the congressional power to regulate.

10. Is this proposed federal statute likely to be constitutional?

A proposed federal statute would prohibit all types of discrimination against Black persons on the basis of their race in every business transaction executed anywhere in the United States by any person or entity, governmental or private.

- Yes, because it could reasonably be viewed as an exercise of Congress's authority to enact laws for the general welfare
- **Yes, because it could reasonably be viewed as a means of enforcing the provisions of the Thirteenth Amendment**
- No, because it would regulate purely local transactions that are not in interstate commerce
- No, because it would invade the powers reserved to the states by the Tenth Amendment

Note:

*The Thirteenth Amendment provides that neither slavery nor involuntary servitude shall exist in the United States. It was passed to eradicate slavery of African-American people and may be invoked to combat the adversity incident to slavery that exists still today. Congress has the power to enforce the Thirteenth Amendment by appropriate legislation, which is not explicitly limited to governmental action. This means that this Amendment can be a useful source of congressional power to reach certain private conduct. Under *Jones v. Mayer*, 392 U.S. 409 (1968), Congress can pass legislation that it rationally concludes is "necessary and proper for abolishing all badges and incidents of slavery in the United States" (quoting other civil rights cases). Discrimination that is banned under the Thirteenth Amendment must be purposeful and invidious on grounds of race, ancestry, or ethnic background.*

There is no independent congressional power to pursue the "general welfare." The only relevance of general welfare is that Congress, when it taxes and spends, must be pursuing the general welfare (a requirement that has very little independent significance today).

*Regarding activities that have a substantial effect on interstate commerce, when those activities are intrastate, the Court will uphold the regulation if it is of economic or commercial activity and if it can conceive of a rational basis on which Congress could conclude that the activity in aggregate substantially affects interstate commerce. *Gonzales v. Raich*, 545 U.S. 1 (2005).*

The Tenth Amendment provides that all powers not delegated to the federal government by the Constitution are reserved to the states (or to the people). However, given the expansive interpretation of federal powers (e.g., the commerce power), little state power is exclusive.

B is correct. The proposed statute is likely to be constitutional on the basis that it is within congressional power to enforce the Thirteenth Amendment through legislation that abolishes badges and incidents of slavery in the U.S. This includes racial discrimination that is purposeful and invidious. A statute prohibiting all types of discrimination against Black people on the basis of their race in every public and private business context is likely to be considered a rational means of enforcing the Thirteenth Amendment.

A is incorrect. This answer reaches the correct answer with the wrong reasoning. Although the statute is likely to be constitutional, it is not because of the congressional power to promote the general welfare. The General Welfare Clause only gives Congress the power to pass laws promoting the general welfare when exercising its taxing and spending power. The proposed statute falls under neither of those categories and as such, this would not be the appropriate basis for finding it constitutional.

C is incorrect. Congress does have the power to regulate purely intrastate transactions when they are commercial in nature and in the aggregate, substantially affect interstate commerce. Moreover, this "substantial effects" rule does not apply here because the business transactions, by their very nature, would impact the stream of commerce.

D is incorrect. The Tenth Amendment does not render this proposed statute unconstitutional for at least two reasons. First, states hold no special powers to regulate business transactions under the Tenth Amendment. Second, the Tenth Amendment reserves to the states any powers not delegated to the federal government by the Constitution, but here, the Thirteenth Amendment grants Congress the power to enact this legislation, as explained above.