

1. In 1998, Congress enacted a statute making it a federal criminal offense for any person to possess or sell cocaine, heroin, marijuana and other specifically-defined hallucinogenic drugs. Soon thereafter Alan Alberts was arrested, convicted, and sentenced to 25 years in a federal penitentiary for possession of cocaine. Ultimately the U.S. Supreme Court decided the case. What result, and why?

The issue in this case is whether Congress has the power under Article One, section ~~two~~<sup>eight</sup> to regulate the possession and selling of drugs. The Supreme Court has firmly established that Congress has the power to regulate the channels and instrumentalities of interstate commerce and to regulate any activity having a substantial <sup>economic</sup> effect on interstate commerce. It first must be determined what effect, if any, does the possession and selling of drugs have on commerce. The government will argue that hallucinogenic drugs affect work productivity. If ~~the workers~~<sup>people</sup> are high on drugs then they are less likely to work or if they do work their productivity will be affected by the drugs. If work production is harmed, then less commodities are being produced which directly affects interstate commerce. The government will use precedent such as <sup>the</sup> Wickard case which held Congress could regulate the production of wheat to control its price. The court held the price of wheat had a substantial effect on interstate commerce. However in the US v. Lopez the court for the first time since 1937 limited Congress' power to regulate commerce. They held guns in schools had no economic effect on interstate commerce. Instead Congress was trying to punish a criminal act. The Court held this is better left up to State governments. In this case the Supreme Court will follow its decision in Lopez because the possession of drugs has no real economic effect on interstate commerce. The statute is just an attempt to punish the criminal act of possessing drugs. The dissent would argue that Congress should have the power to decide what affects interstate commerce. They will argue like Justice Breyer, in Lopez that the cumulative effect should be considered and that no direct link between the act and the regulation should be used.

2. Assume that the Supreme Court held that the 1998 statute was unconstitutional. Thereafter Congress passed a 1999 statute providing that a state would lose 50% of federal block grants to states for education unless the state enacted a statute making it a criminal offense for any person to possess or sell cocaine, heroin, marijuana and other specifically-defined hallucinogenic drugs. The State of Franklin, where possession and use of marijuana is lawful, brought suit against the Secretaries of the Treasury and Education, seeking a declaratory judgment that the 1999 statute is unconstitutional. The U.S. Supreme Court ultimately decided the case on the merits. What result, and why?

The issue in this case is whether Congress has the constitutional authority to place conditions on federal money and spending for states, in order to get compliance from the state? The rule governing this issue is that Congress has the power to spend money on just about anything it finds is in pursuit of the general welfare of the country and this right to spend is virtually immune from judicial review unless of course Congress is spending money to aid religion, then it is likely to be found unconstitutional. Congress has followed Hamilton's view that it can spend for general welfare and outside of those enumerated rights granted in Article I. Congress can spend to pay off debts, general welfare, for the common defense, and in pursuit of compliance which directly speaks to the validity of this statute.

Congress does have the power to spend in pursuit of state compliance with federal standards, however there are four limitations to this right which we will analyze individually. The pursuit of compliance must be in pursuit of general welfare, which arguably this statute is, drugs are bad for society and health and Congress wants to prohibit ~~them~~<sup>its</sup> sale. Second limit is that conditions imposed by Congress on states must be unambiguous, which this condition is, it could not be more clear. The third limit is the condition must be reasonably related to expenditure, ~~pos~~ possession of drugs and federal funding for education are not related in any manner therefore this is likely to fail. The final ~~limit~~<sup>limit</sup> to federal spending is the condition cannot violate any independent constitutional provision, which it is not clear if it does.

Thus, the court is likely to find this statute unconstitutional because it violates the third limit to federal spending established in South Dakota v. Dole.