

Sec. 8—Powers of Congress

Cl. 3—Power to Regulate Commerce

law that required coal-fired electric utilities in the state, producing power for sale in the state, to burn a mixture of coal containing at least 10% Oklahoma-mined coal was invalidated at the behest of a state that had previously provided virtually 100% of the coal used by the Oklahoma utilities.¹¹³⁸ Similarly, the Court invalidated a state law that permitted interdiction of export of the hydroelectric power from the state to neighboring states, when in the opinion of regulatory authorities the energy was required for use in the state; a state may not prefer its own citizens over out-of-state residents in access to resources within the state.¹¹³⁹

States may certainly promote local economic interests and favor local consumers, but they may not do so by adversely regulating out-of-state producers or consumers. In *Hunt v. Washington State Apple Advertising Comm'n*,¹¹⁴⁰ the Court confronted a North Carolina requirement that closed containers of apples offered for sale or shipped into North Carolina carry no grade other than the applicable U.S. grade. Washington State mandated that all apples produced in and shipped in interstate commerce pass a much more rigorous inspection than that mandated by the United States. The inability to display the recognized state grade in North Carolina impeded marketing of Washington apples. The Court obviously suspected that the impact was intended, but, rather than strike down the state requirement as purposeful, it held that the regulation had the practical effect of discriminating, and, as no defense based on possible consumer protection could be presented, the Court invali-

¹¹³⁸ *Wyoming v. Oklahoma*, 502 U.S. 437 (1992). See also *Maryland v. Louisiana*, 451 U.S. 725 (1981) (a tax case, invalidating a state first-use tax, which, because of exceptions and credits, imposed a tax only on natural gas moving out of state, because of impermissible discrimination).

¹¹³⁹ *New England Power Co. v. New Hampshire*, 455 U.S. 331 (1982). See also *Hughes v. Oklahoma*, 441 U.S. 322 (1979) (voiding a ban on transporting minnows caught in the state for sale outside the state); *Sporhase v. Nebraska*, 458 U.S. 941 (1982) (invalidating a ban on the withdrawal of ground water from any well in the state intended for use in another state). These cases largely eviscerated a line of older cases recognizing a strong state interest in the protection of animals and resources. See *Geer v. Connecticut*, 161 U.S. 519 (1896). *New England Power* had rather old antecedents. *E.g.*, *West v. Kansas Gas Co.*, 221 U.S. 229 (1911); *Pennsylvania v. West Virginia*, 262 U.S. 553 (1923).

¹¹⁴⁰ 432 U.S. 333 (1977). Other cases in which a state was attempting to promote and enhance local products and businesses include *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970) (state required producer of high-quality cantaloupes to pack them in the state, rather than in an adjacent state at considerably less expense, in order that the produce be identified with the producing state); *Foster-Fountain Packing Co. v. Haydel*, 278 U.S. 1 (1928) (state banned export of shrimp from state until hulls and heads were removed and processed, in order to favor canning and manufacture within the state).