Due to the high cost of labor, several large corporations shut down their manufacturing plants in a state and moved their operations overseas. This caused severe and continuous unemployment in the state, which relies heavily on manufacturing jobs and manufactured goods to spur its economy. In response, the state legislature enacted a statute that requires certain businesses selling goods in the state to purchase goods produced in the state in an amount equal to at least half of the business's annual sales in the state. This statute only applies to businesses with annual sales in the state that exceed $3 million.

A company that has annual sales in the state of $5 million challenges the state statute in federal court.

Which constitutional provision provides the strongest ground on which to attack this statute?

A. The Article I commerce clause.

B. The Fourteenth Amendment due process clause.

C. The Fourteenth Amendment equal protection clause.

D. The Fourteenth Amendment privileges or immunities clause.

Explanation:

Dormant commerce clause

(state regulation of interstate commerce)

Type of regulation	Examples	Standard
Discriminatory (favors in-state interests)	• Taxing out-of-state products more heavily • Requiring use of in-state products/services	Unconstitutional unless: • furthers legitimate state interest *and* • no reasonable alternative
Nondiscriminatory (otherwise burdensome)	• Prohibiting all commercial vehicles on state highways • Overly strict requirements for all commercial shipments	Unconstitutional if: • burden clearly exceeds local benefits

The Article I commerce clause gives Congress extensive authority to regulate interstate commerce. This clause also carries a negative implication (ie, the **dormant commerce clause**), which prohibits states from discriminating against or otherwise unduly burdening interstate commerce. **Discrimination against interstate commerce**—ie, favoring in-state over out-of-state economic interests—is **unconstitutional unless** (1) it furthers a **legitimate, *noneconomic* state interest** and (2) **no reasonable alternative** exists.

Here, the state statute discriminates against interstate commerce since it requires certain businesses to purchase substantial goods in the state at the expense of out-of-state competitors. The statute was enacted to relieve severe and continuous unemployment in the state. But since that interest is *economic* in nature, it cannot justify discrimination against interstate commerce. Therefore, the commerce clause is the strongest constitutional basis on which to attack this statute.

(Choice B) Under the Fourteenth Amendment due process clause, state laws that substantially impact a fundamental right are almost always found invalid under strict scrutiny. But since there is no fundamental right to engage in business, a due process challenge would likely fail.

(Choice C) Discriminatory state laws that substantially impact a fundamental right or protected class generally violate the Fourteenth Amendment equal protection clause. But since no fundamental right is implicated and businesses are not a protected class, the statute likely satisfies this clause.

(Choice D) The Fourteenth Amendment privileges or immunities clause prohibits states from infringing on the very limited rights of national citizenship—none of which are at issue here.

Educational objective:

State laws that favor in-state over out-of-state economic interests violate the dormant commerce clause unless (1) they further a legitimate, noneconomic state interest and (2) no reasonable alternative exists.

References

- U.S. Const. art. I, § 8, cl. 3 (commerce clause).
- Maine v. Taylor, 477 U.S. 131, 138 (1986) (explaining that the appropriate test for a dormant commerce clause challenge depends on whether the burden on interstate commerce is discriminatory or nondiscriminatory).