

To encourage urban farming, a city ordinance requires vegetables sold at farmers' markets in the city to have been grown within the city limits. A farmer who grows vegetables on land in a nearby state wants to sell those vegetables at a farmers' market in the city. The farmer has challenged the ordinance on constitutional grounds.

What is the farmer's best argument that the ordinance is unconstitutional?

- A. The ordinance discriminates on its face against interstate commerce, and there are nondiscriminatory ways to promote the city's interest in encouraging urban farming.
- B. The ordinance is not substantially related to an important government interest.
- C. The ordinance places an undue burden on interstate commerce that is clearly disproportionate to the city's interest in encouraging urban farming.
- D. The ordinance unconstitutionally burdens the farmer's right to travel across state lines to sell his vegetables at the farmers' market.

Correct

Collecting Statistics

01 min, 10 secsTime Spent

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Explanation:

Discrimination against out-of-state commerce

Type	Description	Example
Facial discrimination	Regulation's language explicitly favors in-state commerce	"Corn grown out-of-state must satisfy more extensive safety measures"
Discriminatory application	Facially neutral regulation applied to favor in-state over out-of-state commerce	State inspects corn grown out-of-state but not corn grown in-state
Discriminatory effect	Otherwise neutral regulation disproportionately affects out-of-state commerce	Enforcement of safety measures results in ban of corn grown out-of-state only

The ability of state and local governments to regulate interstate commerce is limited by the **dormant commerce clause**, which generally **prohibits discrimination against interstate commerce**. A state or local regulation can be discriminatory in any of the following ways:

on its face – when the language of the regulation expressly favors in-state interests

in its application – when a facially neutral regulation is applied in favor of in-state interests

in its effect – when an otherwise neutral law disproportionately impacts out-of-state commerce

A discriminatory regulation is **invalid unless** (1) it furthers a **legitimate, noneconomic** state or local **interest** and (2) **no reasonable, nondiscriminatory alternative** exists to promote this interest.

Here, the city ordinance discriminates on its face against interstate commerce because it expressly limits the sale of vegetables at the city's farmers' markets to those grown within the city limits. As a result, this excludes the sale of vegetables grown out-of-state. The city has a legitimate, noneconomic interest in encouraging urban farming. But reasonable, nondiscriminatory alternatives are available to promote this interest—eg, providing grants for urban farming. Therefore, this is the farmer's best argument that the ordinance is unconstitutional.

(Choice B) Intermediate scrutiny requires that government actions be substantially related to an important government interest when the government discriminates against a **quasi-suspect class** (not seen here).

(Choice C) A *nondiscriminatory* state or local law is valid if it satisfies the undue-burden test, which requires that the law's legitimate, local benefits clearly exceed its burdens on interstate commerce. But this test does not apply to *discriminatory* state or local laws (as seen here).

(Choice D) The right to travel across state lines is protected by the [privileges and immunities clauses](#) of Article IV and the Fourteenth Amendment. However, this right to travel does not include the right to engage in commercial enterprises while temporarily present in another state.

Educational objective:

A state or local law that discriminates—on its face, in its application, or in its effect—against interstate commerce is invalid unless (1) it furthers a legitimate, noneconomic state or local interest and (2) no reasonable, nondiscriminatory alternative exists.

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