

A federal statute provides that the cities in which certain specified airports are located may regulate the rates and services of all limousines that serve those airports, without regard to the origin or destination of the passengers who use the limousines.

A city in State A is located adjacent to a city in State B. The airport serving both of them is located in the State A city and is one of those airports specified in the federal statute. The State A city council has adopted a rule that requires any limousines serving the airport to charge only the rates authorized by the State A city council.

An airline limousine service has a lucrative business transporting passengers between the State B city and the airport in the State A city, at much lower rates than those required by the State A city council. It transports passengers in interstate traffic only; it does not provide local service within the State A city. The new rule adopted by the State A city council will require the limousine service to charge the same rates as limousines operating only in the State A city.

Must the airline limousine service comply with the new rule of the State A city council?

- A. No, because the airline limousine service is engaged in interstate commerce and this rule is an undue burden on that commerce.
- B. No, because the rule would arbitrarily destroy a lucrative existing business and, therefore, would amount to a taking without just compensation.
- C. Yes, because Congress has authorized this form of regulation by the State A city and, therefore, removed any constitutional impediments to it that may have otherwise existed.
- D. Yes, because the airport is located in the State A city and, therefore, its city council has exclusive regulatory authority over all transportation to and from the airport.

Explanation:

The **commerce clause** empowers Congress to regulate interstate commerce—ie, nearly all activities involving two or more states. This clause also carries a negative implication (ie, the **dormant commerce clause**) that **prohibits states and municipalities** from discriminating against or otherwise **unduly burdening interstate commerce**. But **Congress** can exercise its broad commerce power to **explicitly authorize** conduct that would otherwise violate the dormant commerce clause.

Here, the State A city council rule requires all airport limousine services to charge only the rates authorized by the city council. It can be presumed that this rule unduly burdens interstate commerce because it regulates economic activities between State A and State B. But since Congress explicitly authorized this type of regulation by the State A city (via the federal statute), any constitutional impediments that may have existed were removed **(Choice A)**. As a result, the interstate limousine service must comply with the State A city rule.

(Choice B) A regulation that destroys *all* economic value of a business will be deemed a **taking**. Here, there is no evidence that the interstate limousine service's business will be destroyed by the higher rates, so the State A city council rule is not a taking. And even if it was, this would only allow the limousine service to seek just compensation (ie, fair market value at the time of the taking)—not to ignore the rule.

(Choice D) The city council's regulatory authority over transportation to and from the airport located in the city is *not* exclusive. Instead, this authority is shared with State A and the federal government.

Educational objective:

Congress can explicitly authorize states and municipalities to act in ways that would otherwise violate the dormant commerce clause.

References

- U.S. Const. art. I, § 8, cl. 3 (commerce clause).
- *Ne. Bancorp v. Bd. of Governors of Fed. Reserve Sys.*, 472 U.S. 159, 174 (1985) (setting forth that states can discriminate against interstate commerce when Congress authorizes such action).
- 15A Am. Jur. 2d Commerce § 27 (2019) (explaining that Congress can authorize state action that would ordinarily violate the dormant commerce clause).

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Dormant commerce clause analysis

