

The United States government demonstrated that terrorist attacks involving commercial airliners were perpetrated exclusively by individuals of one particular race. In response, Congress enacted a statute imposing stringent new airport and airline security measures only on individuals of that race seeking to board airplanes in the United States.

Which of the following provides the best ground for challenging the constitutionality of this statute?

- A. The commerce clause of Article I, Section 8.
- B. The due process clause of the Fifth Amendment.
- C. The privileges and immunities clause of Article IV.
- D. The privileges or immunities clause of the Fourteenth Amendment.

Explanation:

A law that treats **similarly situated persons differently** may violate the constitutional principle of **equal protection**, which applies to the **federal government** through the **Fifth Amendment** due process clause. This is especially likely when the law intentionally discriminates against a **suspect class** (eg, race). That is because the government must clear the highest hurdle—**strict scrutiny**—to justify such a law. And since this federal statute intentionally targets a particular race, due process provides the best ground to challenge the statute.

*The equal protection clause of the Fourteenth Amendment applies only to states and localities—not the federal government.

(Choice A) The **commerce clause** grants Congress broad plenary power to regulate the instrumentalities of interstate commerce—eg, planes, trains, automobiles. Therefore, this clause *supports* Congress's authority to regulate airports and airlines.

(Choice C) The Article IV privileges and immunities clause generally prohibits *states* from discriminating against citizens of other states. But it does not apply to the *federal* government.

(Choice D) The Fourteenth Amendment privileges or immunities clause applies to states—not the federal government—and bars them from depriving individuals of the very limited rights of **national citizenship**.

Educational objective:

Equal protection principles apply to the federal government through the Fifth Amendment due process clause. And under this clause, federal laws that intentionally discriminate against a suspect class (eg, race) are almost always invalidated under strict scrutiny.

References

- *Bolling v. Sharpe*, 347 U.S. 497, 499–500 (1954) (holding that equal protection principles apply to the federal government through the Fifth Amendment due process clause).

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Fifth Amendment due process challenge (equal protection principles)

