Under a state law, oil and gas rights can pass by will or through intestate succession. Some oil and gas rights in the state have been divided into very small interests after several generations of passing by intestate succession. It therefore is difficult to enter into extraction contracts in the state because of the need to include large numbers of heirs for any given tract of land. To remedy this problem, the state has enacted a law that provides that, at the death of an owner of less than 1% of the oil and gas interests in a tract of land, that owner's oil and gas rights are extinguished and his or her interests are transferred pro rata to the remaining owners.

Is this law constitutional?

A. No, because the law effects a taking of property without just compensation.

B. No, because the law unduly burdens interstate commerce in oil and gas production.

C. Yes, because property inheritance is a privilege created by state law.

D. Yes, because the law rationally promotes the legitimate state interest in fostering resource development.

Incorrect

Correct answer A

Collecting Statistics

01 min, 10 secsTime Spent

2023Version

Explanation:

Fifth Amendment takings

Type	Attributes
Physical	Possession or permanent physical invasion of property
Regulatory	Deprivation of all economically beneficial uses Restricts use under totality of circumstances: character of government action economic impact reasonable investment-back expectations
Exaction	Condition to obtain building/development permit
Destruction	Destruction of property or property interest (eg, easements, liens)

A **taking** occurs when the government **destroys private property or property rights**, including the right to transfer property by will or intestate succession. The **Fifth Amendment takings clause**, as applied to the states through the Fourteenth Amendment, **requires** that a taking be for a **public use** (eg, fostering resource development) AND that the government **justly compensate** the owner for the property's fair market value.

Here, the state law extinguishes the property rights of a deceased owner who owns less than 1% of the oil and gas interests in a tract of land and requires that such interests be transferred pro rata to the remaining owners. Although the law only impacts owners with minimal interests, the extinguishment and transfer constitute a taking because they destroy the owner's rights to transfer such property interests. And since the state did not provide any compensation to the owners, the state law effects an unconstitutional taking.

(Choice B) A state law violates the dormant commerce clause when it *discriminates* against or otherwise unduly burdens interstate commerce. The state law here is nondiscriminatory because it applies equally to in-state and out-of-state owners of oil and gas rights. It also does not unduly burden interstate commerce since any burden placed on interstate commerce does not clearly exceed the local benefits of increasing oil and gas production.

(Choice C) Even if property inheritance is a privilege created by state law, state inheritance laws must comply with constitutional provisions—including the Fifth Amendment takings clause.

(Choice D) A government must always pay just compensation when it takes private property for a public use—even if the taking rationally promotes a legitimate state interest (ie, satisfies rational basis scrutiny).

Educational objective:

A taking occurs when the government destroys private property or property rights—including interests transferable by will or intestate succession. The government may effectuate a taking only for a public use and must provide just compensation to the owner.

References

Hodel v. Irving, 481 U.S. 704, 717 (1987) (holding that a federal statute preventing the transfer by devise or descent of an interest in land without just compensation constitutes an unconstitutional taking).