

Congress wishes to enact legislation prohibiting discrimination in the sale or rental of housing on the basis of the affectional preference or sexual orientation of the potential purchaser or renter. Congress wishes this statute to apply to all public and private vendors and lessors of residential property in this country, with a few narrowly drawn exceptions.

Which of the following clauses would provide the most credible basis for congressional authority to enact such a statute?

- A. The commerce clause of Article I, Section 8, because the sale or rental of almost all housing in this country could reasonably be deemed to have a substantial effect on interstate commerce.
- B. The enforcement clause of the Fourteenth Amendment, because that amendment prohibits all public and private actors from engaging in irrational discrimination.
- C. The enforcement clause of the Thirteenth Amendment, because that amendment clearly prohibits discrimination against the class of persons protected by this statute.
- D. The general welfare clause of Article I, Section 8, because the conduct the statute prohibits could reasonably be deemed to be harmful to the national interest.

Explanation:

The Article I, section 8 **commerce clause** vests Congress with *broad* authority to **regulate interstate commerce** (ie, activities affecting two or more states). This includes:

- the channels of interstate commerce (eg, railroads)
- the instrumentalities of interstate commerce (eg, trains)
- persons or things moving in interstate commerce (eg, cargo) *and*
- any activities that, singly or in the aggregate, **substantially affect** interstate commerce.

Federal statutes enacted under this broad power are constitutional so long as there is a rational or **reasonable basis for concluding** that the regulated activity **substantially affects interstate commerce**. Therefore, regulations involving **economic activities** are **presumptively constitutional**.

Here, Congress wishes to enact a statute prohibiting discrimination based on affectional preference or sexual orientation in the sale or rental of almost all housing in this country. These activities presumably have a substantial effect on interstate commerce since they are *economic* in nature. Therefore, the commerce clause provides a credible basis for congressional authority to enact the proposed statute.

(Choice B) The Fourteenth Amendment enforcement clause gives Congress the authority to enforce the amendment's **other provisions**. But these provisions (eg, the equal protection clause) only apply to state actors—not all private actors.

(Choice C) Under the Thirteenth Amendment enforcement clause, Congress can enact legislation enforcing the amendment's prohibition of slavery and involuntary servitude—which are not at issue here.

(Choice D) The Article I, section 8 taxing and spending clause only authorizes Congress to *tax and spend* for the general welfare—not to prohibit conduct harmful to the national interest.

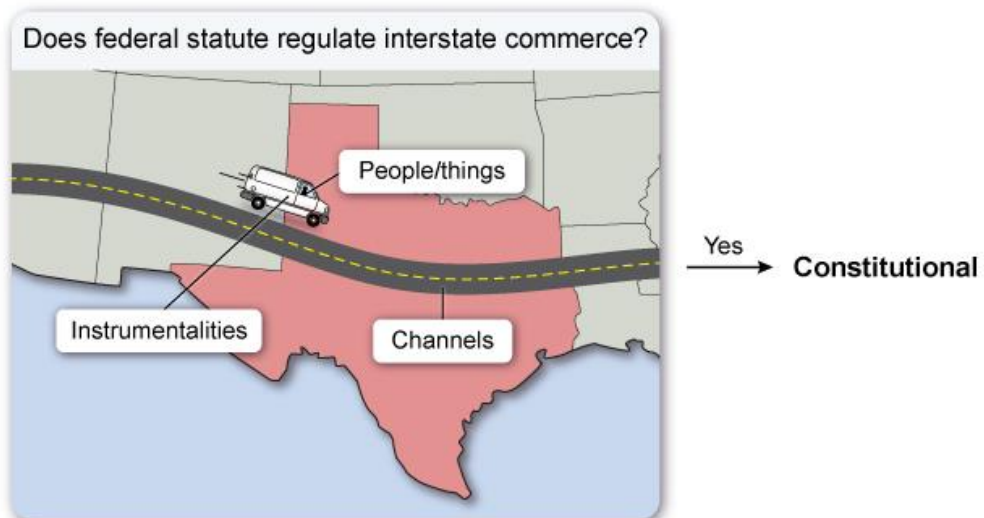
Educational objective:

Federal statutes enacted under the commerce clause are constitutional so long as there is a rational basis for concluding that the regulated activity substantially affects interstate commerce. Therefore, regulations that involve economic activities are presumptively constitutional.

References

- Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241, 258 (1964) (holding that the commerce clause allows Congress to prohibit racial discrimination by local motels serving travelers).

Commerce clause challenge



No ↓

