

After several well-publicized deaths caused by fires in products made from highly flammable fabrics, State A enacted a statute prohibiting "the manufacture or assembly of any product in this state which contains any fabric that has not been tested and approved for flame retardancy by a specific privately owned and operated testing company located in State A."

For many years, a fabric mill located in State A has had its fabric tested for flame retardancy by a privately owned and operated testing company located in State B. This testing company is a reliable organization that uses a process for testing and approving fabrics for flame retardancy identical in all respects to that used by the State A testing company.

Because the fabric mill wishes to continue to have its fabric tested solely by the State B testing company, the fabric mill files an action in a State A court challenging the constitutionality of the State A statute as applied to its circumstances.

In this suit, should the court hold the statute to be constitutional?

- A. No, because it denies the fabric mill the equal protection of the laws.
- B. No, because it imposes an unreasonable burden on interstate commerce.
- C. Yes, because it is a legitimate means of protecting the safety of the public.
- D. Yes, because it is reasonably related to the protection of the reputation of the fabric industry located in State A.

Explanation:

Dormant commerce clause

(state regulation of interstate commerce)

| Type of regulation | Examples | Standard |
|--|---|--|
| Discriminatory (favors in-state interests) | <ul style="list-style-type: none">• Taxing out-of-state products more heavily• Requiring use of in-state products/services | Unconstitutional unless: <ul style="list-style-type: none">• furthers legitimate state interest <i>and</i>• no reasonable alternative |
| Nondiscriminatory (otherwise burdensome) | <ul style="list-style-type: none">• Prohibiting all commercial vehicles on state highways• Overly strict requirements for all commercial shipments | Unconstitutional if: <ul style="list-style-type: none">• burden clearly exceeds local benefits |

The states' power to regulate interstate commerce is restricted by the **dormant commerce clause**, which **prohibits states** from **discriminating against** or otherwise **unduly burdening interstate commerce**. Discrimination against interstate commerce—ie, favoring in-state over out-of-state economic interests—is **invalid unless**:

- it furthers a **legitimate, noneconomic state interest** (eg, public health and safety) *and*
- **no reasonable alternative** exists.

Here, the State A statute discriminates against interstate commerce since it requires that an *in-state* company test flame retardancy. The statute promotes the state's legitimate, noneconomic interest in ensuring safety. But reasonable alternatives are available—eg, allowing *any* reliable organization, including the State B company, to conduct these tests. Therefore, the statute is unconstitutional **as applied** to these circumstances because it unreasonably burdens interstate commerce **(Choice C)**.

(Choice A) State laws that substantially impact a fundamental right or intentionally discriminate against a protected class almost always violate the Fourteenth Amendment **equal protection clause**. But since no fundamental right is implicated and businesses are not a protected class, the statute likely does not deny the fabric mill the equal protection of the laws.

(Choice D) A state law that discriminates against interstate commerce must further a legitimate, *noneconomic* state interest and no reasonable alternatives can exist. Therefore, the fact that the statute is reasonably related to State A's *economic* interest in protecting the reputation of State A's fabric industry does not justify the statute.

Educational objective:

Under the dormant commerce clause, states cannot discriminate against interstate commerce unless (1) the discrimination furthers a legitimate, noneconomic state interest and (2) no reasonable alternative exists.

References

- U.S. Const. art. I, § 8, cl. 3 (commerce clause).
- *Maine v. Taylor*, 477 U.S. 131, 138 (1986) (explaining that state discrimination against interstate commerce is invalid unless it furthers a legitimate, noneconomic state interest and no reasonable alternatives exist).

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