

In response to massive layoffs of employees of automobile assembly plants located in State A, the state legislature enacted a statute which prohibits the parking of automobiles manufactured outside of the United States in any parking lot or parking structure located within State A. This statute does not apply to parking on public streets.

Which of the following is the strongest argument with which to challenge the constitutionality of this statute?

- A. The statute denies the owners of foreign-made automobiles the equal protection of the laws.
- B. The statute deprives the owners of foreign-made automobiles of liberty or property without due process of law.
- C. The statute imposes an undue burden on foreign commerce.
- D. The statute is inconsistent with the privileges or immunities clause of the Fourteenth Amendment.

## Explanation:

### Dormant commerce clause

(state regulation of interstate commerce)

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

The [commerce clause](#) gives Congress extensive authority to regulate interstate and foreign commerce. The negative implication of this clause (ie, the **dormant commerce clause**) prohibits states from discriminating against or otherwise unduly burdening interstate or foreign commerce. Therefore, **state laws** that **discriminate against interstate commerce** by favoring in-state over out-of-state interests are invalid unless:

- the law furthers a **legitimate, noneconomic state interest** (eg, public health) *and*
- **no reasonable alternative** exists to achieve that interest.

State laws that **discriminate against foreign commerce** are subject to even **greater scrutiny** due to the federal government's substantial interest in speaking with one voice in foreign affairs.

Here, the state statute discriminates against foreign commerce by preventing owners of foreign-made automobiles from parking in lots or structures in the state. This is to encourage consumers to buy domestic-made automobiles, many of which are manufactured in State A. And since the statute furthers an *economic* state interest, it unduly burdens foreign commerce. Therefore, this is the strongest argument to challenge the statute's constitutionality.

**(Choices A & B)** Discriminatory laws implicate the constitutional guarantee of [equal protection](#) of the laws. And a law cannot deprive persons of a life, liberty, or property interest without [due process](#) of law. But such laws are almost always upheld when they do not impact a fundamental right or protected class (as seen here) since they need only pass rational basis scrutiny.

**(Choice D)** The Fourteenth Amendment privileges or immunities clause bars states from depriving individuals of the very limited rights of **national citizenship**—none of which apply here.

**Educational objective:**

State laws that discriminate against foreign commerce are reviewed with the utmost scrutiny and are almost always invalid since it is imperative that the country speak with one voice in foreign affairs.

**References**

- U.S. Const. art. I, § 8, cl. 3 (commerce clause).
- South-Central Timber Dev., Inc. v. Wunnicke, 467 U.S. 82, 99–100 (1984) (explaining that state discrimination against foreign commerce is subject to greater scrutiny than state discrimination against interstate commerce).

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